OCT 3 1935

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 23.

THE BASSICK MANUFACTURING COMPANY,
Plaintiff-Petitioner.

vs.

THE R. M. HOLLINGSHEAD COMPANY,
Defendant-Respondent.

# BRIEF ON BEHALF OF PLAINTIFF-PETITIONER.

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# SUPREME COURT OF THE UNITED STATES

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Plaintiff-Petitioner,

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**THE R. M. HOLLINGSHEAD COMPANY,**
Defendant-Respondent.

BRIEF ON BEHALF OF PLAINTIFF-PETITIONER.

## B.

## A List of the Cases in Which Gullborg Patent No. 1,307,734, Has Been Involved With Reference to the Official Reports of the Opinions Delivered in the Courts Below, In So Far As They Have Been Reported.

This list includes all of the cases in which decrees were entered, either after a contest or by consent or by default. The final decrees in all of the contested cases held the Gullborg patent to be valid and infringed ex-

cept in the suit against Seltzer and Hurwitz of Philadelphia, in which the court held that there was not adequate proof of the alleged act of infringement.*

Petitioner was known as The Bassick Manufacturing Company until September 17, 1928, whereupon the corporate name was changed to Alemite Manufacturing Corporation. On May 13, 1929, the corporate name was changed to Alemite Corporation.

The petitioner was the plaintiff in all of the suits against the following defendants.

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Adams Grease Gun Corp. | N. Y. | Dec. 21, 1931 | 53 Fed. (2d) 36<br>39 Fed. (2d) 90<br>26 Fed. (2d) 72 |
| A. E. A. Mfg. Co., Inc. | N. Y. | Oct. 11, 1927 | |
| Airshot Lubrication Co. | Ohio | Aug. 22, 1927 | |
| Airshot Manufacturing Co. | Kan. | Sept. 19, 1932 | |
| Alexander, H. and Hrusa, F. C. | Calif. | Mar. 10, 1930 | |
| Aloia, Joseph | N. Y. | Jan. 5, 1929 | |
| Alper, David | Calif. | Dec. 16, 1929 | |
| Aluminum Screw Machine Products Co. | N. J. | Jan. 17, 1928 | |
| American Luberite Corp. | N. Y. | June 25, 1929 | |
| Auto Equipment Co. | Ind. | July 6, 1926 | 13 Fed. (2d) 463 |
| Auto Equipment Co., Inc. | Tex. | Dec. 9, 1927 | |
| Auto Supply Co., Inc. | Miss. | July 3, 1929 | |
| Automotive Specialty Corp. | N. Y. | Sept. 26, 1927 | |
| Ballou & Wright | Wash. | Feb. 23, 1928 | |
| Barsook, Henry | Mich. | Sept. 11, 1930 | |
| Bearing Supply Co. | Wash. | July 25, 1930 | |
| Beckley-Ralston Co. | Ill. | Jan. 10, 1928 | |
| Bel-Mel Corp. | Ill. | May 12, 1930 | |
| Bercovich, J. | Calif. | Dec. 2, 1929 | |
| Bercovich, M. | Calif. | Mar. 10, 1930 | |
| Berkson, Mac | Ohio | Feb. 10, 1928 | |
| Berlin, David | Mich. | Oct. 14, 1930 | |
| Berlin, F. A. | D. C. | Jan. 23, 1928 | |
| Biddle Purchasing Co. | N. Y. | Jan. 30, 1931 | |
| Blain, W. P. | Ill. | July 1, 1925 | |
| Blumenkopf, Henry | N. Y. | Feb. 4, 1930 | |
| Borderland Auto Supply Co. | Tex. | Sept. 1, 1926 | |
| Boston Pressed Metal Co. | Mass. | Sept. 12, 1927 | |
| Boyer, A. J. | Mass. | Sept. 11, 1930 | |
| Brandfield Corp. | N. Y. | Mar. 9, 1932 | |

* For the convenience of courts and counsel, we have had printed in five volumes all of the opinions (regardless whether officially reported) of all of the courts in all of these cases, together with the decrees of the courts. Copies of these so-called "Adjudication Books" have been furnished to counsel for the respondent herein, and several copies will be left with the Clerk of this Court at the time of the argument.

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Brandmeier, August T., August T. Brandmeier Corp. and Kelwax Corp. | N. Y. | Feb. 15, 1934 | |
| Brown, M. | N. Y. | Oct. 2, 1934 | |
| Brown & Green Ignition Sales Co. | N. Y. | June 26, 1928 | |
| Burns, W. E. | Ore. | Sept. 11, 1925 | |
| Byron, S. | Ill. | Sept. 22, 1927 | |
| California Dairies | Calif. | Feb. 18, 1929 | |
| Carpenter, N. A. | N. Y. | Nov. 15, 1928 | |
| Carson Equipment Co. | N. Y. | Mar. 18, 1929 | |
| Cartman, S. J. and J. A. | Calif. | Mar. 7, 1930 | |
| Cavanee, F. and Smith, W. D. | Kan. | Sept. 30, 1931 | |
| Champion Hy-Pressure Mfg. Co. | N. Y. | Feb. 25, 1925 | |
| Chanslor & Lyon Co. | Calif. | Feb. 6, 1929 | |
| Chapman, D. L. and F. R. | Colo. | Jan. 26, 1929 | |
| Chicago Auto Equipment Co. | Ill. | Oct. 15, 1929 | |
| Chicago Automobile Supply House | Ill. | Oct. 15, 1929 | |
| Clark, A. B. et al. | Calif. | Aug. 25, 1933 | |
| Clarksberg Tire Co. | W. Va. | Apr. 12, 1932 | |
| Coffman, W. R. | W. Va. | Apr. 12, 1932 | |
| Cohan, George | N. Y. | Nov. 28, 1930 | |
| Cohen, Gottlieb | N. Y. | Apr. 4, 1928 | |
| Cohen, J. M. and M. A. | Mass. | Nov. 18, 1925 | |
| Cohn, Morris D. | Calif. | Jan. 29, 1932 | |
| Coliseum Battery Co. | Ill. | Oct. 15, 1929 | |
| Commonwealth Screw Co. | Mass. | Jan. 28, 1926 | |
| Community Motor Supply Co. | Ill. | June 16, 1927 | |
| Continental Sales Co. | Ill. | Sept. 29, 1925 | |
| Continental Tire Corp. | Ill. | Mar. 16, 1926 | |
| Cook Auto Machine Co. | Ark. | Oct. 17, 1929 | |
| Cook, J. B., Auto & Machine Co. | Tenn. | Jan. 2, 1926 | |
| Coombs, C. B. | Ind. | Oct. 27, 1933 | |
| Cronin Co., P. J. | Ore. | Apr. 13, 1928 | |
| Curtice, E. S. and Clark, E. O. | Miss. | | |
| Curtis & Christensen, Inc. | Calif. | Feb. 15, 1930 | |
| Cussins & Fearn Co. | Ohio | Apr. 9, 1927 | |
| C. & G. Manufacturing Co. | Ill. | Jan. 8, 1926 | |
| Dawson, S. and Temple, R. | Ill. | Oct. 26, 1931 | |
| Doliva, George | Mich. | Sept. 11, 1930 | |
| Doyle, Larry | Calif. | June 10, 1931 | |
| Drapery Hardware Mfg. Co. | N. Y. | Oct. 18, 1928 | |
| Drolet & O'Brien Co. | Ill. | Oct. 15, 1930 | |
| Eastern Machine Co. et al. | N. Y. | July 22, 1932 | |
| E. G. Mfg. Co., Inc. | N. Y. | Dec. 5, 1927 | |
| Eisenberg, B. and L. | N. J. | Dec. 16, 1931 | |
| Fairchild, Roger | Conn. | Aug. 23, 1932 | |
| Farnsworth, R. and Callahan, T. J. | Calif. | | |
| Farrell Auto Supply Co., Inc. | N. Y. | Aug. 23, 1929 | |
| Farwell, Ozmun, Kirk & Co. | Minn. | Nov. 14, 1928 | |
| Faught, A. E. and Windmiller, H. J. | Tex. | May 18, 1927 | |
| Feldman, L. | Ill. | Dec. 6, 1927 | |
| Fischer, J. Waterman | Calif. | Aug. 24, 1926 | |
| Flamm, Samuel A. | Pa. | Jan. 24, 1930 | |
| Fly, William L. | Mo. | Nov. 19, 1925 | |
| Franklin Auto Supply Co. | R. I. | May 18, 1928 | |
| Froehling Mfg. Co. | Ill. | Dec. 10, 1923 | |
| Fromm, Eric | Mich. | Sept. 30, 1930 | |

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Gaines Motor Sales Co. | Tex. | Apr. 9, 1927 | |
| Garelick, Jake | Mich. | Oct. 15, 1930 | |
| Gavin Co., P. W. | Calif. | Dec. 27, 1926 | |
| Geller, Ward & Hasner Hardware Co. | Mo. | Apr. 15, 1926 | |
| Gibson Company, The | Ind. | July 12, 1927 | |
| Gilbertson, Ralph E. | Minn. | July 8, 1935 | |
| Gillette, S. H. | Calif. | Dec. 11, 1929 | |
| Globe Sales Co. and W. S. Rea | Minn. | Nov. 28, 1932 | |
| Glyder, Morris J. | N. Y. | Feb. 2, 1932 | |
| Godbey, John S. | Ohio | June 25, 1928 | |
| Gold, J. N. and Marinoff, J. | Pa. | Jan. 21, 1929 | |
| Goldberg, S. | N. Y. | June 29, 1929 | |
| Gould-Mersereau Co. | N. Y. | Feb. 9, 1928 | |
| Grant-Dadey Co. | N. D. | May 25, 1927 | |
| Gray Co., Inc. | Minn. | July 28, 1932 | |
| Grease-Rite Pneumatic Gun Co. | Colo. | Nov. 1, 1927 | |
| Greenberg, H. and Jacobs, B. | R. I. | Jan. 22, 1932 | |
| Green, Howard C. | Calif. | Oct. 16, 1929 | |
| Gresser Manufacturing Co. | Mich. | May 15, 1930 | |
| Griswold-Sohl Co. | Ohio | Sept. 10, 1925 | |
| Gross Hardware & Supply Co., Ph. | Wis. | Oct. 19, 1927 | |
| Gulotta, Charles | N. Y. | May 28, 1929 | |
| Haiden Auto Parts, Inc. | Calif. | Sept. 5, 1929 | |
| Hamerschlag, E. | N. Y. | Feb. 18, 1935 | |
| Harris, Max, and Engert, Hyman E. | Ill. | Jan. 10, 1934 | |
| Harris, Roger and Coleman, L. R. | Conn. | Apr. 11, 1933 | |
| Harris, S. and Hirsch, R. | Ill. | Oct. 8, 1930 | |
| Hartman, John J. | Calif. | Aug. 30, 1929 | |
| Hasford, C. B. | Tex. | Mar. 19, 1935 | |
| Hassell, Inc., John | N. Y. | May 3, 1929 | |
| Haynes, W. W. and Patrick, S. A. | Okla. | July 16, 1927 | |
| Hickman, Paul W. | Pa. | Feb. 7, 1930 | |
| Hi-Pressure Sales Co., Inc. | Calif. | May 7, 1934 | 33 Fed. (2d) 91 |
| Hittelman, R. | Calif. | May 25, 1931 | |
| Hockaday, Harlow & Phillips | Calif. | Sept. 11, 1929 | |
| Hofer, Jacob, Inc. | N. Y. | Nov. 15, 1928 | |
| Holliday, W. J. & Co. | Ind. | May 28, 1927 | |
| Hollingshead Company, The R. M. | Tenn. | | 50 Fed. (2d) 3<br>53 Fed. (2d) 4<br>73 Fed. (2d) 5 |
| Horst & Wilkinson Co., Inc. | Iowa | Nov. 19, 1928 | |
| Huber, J. F. and F. S. | Calif. | Nov. 29, 1929 | |
| Hunter, William J. | N. Y. | Nov. 29, 1926 | |
| Hygrade Machine Products Mfg. Co., Inc. | | May 27, 1929 | |
| Ideal Auto Supply Co. | Ill. | Oct. 15, 1929 | |
| Inter-Mountain Electric Co. | Utah | Dec. 19, 1929 | |
| Jacobs, I. H. | Calif. | Mar. 10, 1930 | |
| Jaffe, Harry E. | Ill. | Apr. 8, 1926 | |
| Jawers Auto Supply Store | Pa. | July 1, 1930 | |
| Johnston, Mose | Ohio | Nov. 11, 1927 | |
| Jones, J. Elmer | Mo. | June 30, 1927 | |
| Jones, V. P. | Calif. | May 6, 1931 | |
| Jones, Wesley J. | Kan. | July 8, 1929 | |
| Justus & Parker Co. | Ohio | Jan. 26, 1929 | |

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Kansas City Filling Station Supply Co. | Mo. | Jan. 9, 1928 | |
| Kantor, Max | N. Y. | Dec. 8, 1933 | |
| Kavanaugh, A. W. et al. | Okla. | Oct. 14, 1929 | |
| Kellogg Mfg. Co. | N. Y. | Apr. 1, 1930 | |
| Kelly-How-Thomson Co. | Minn. | Jan. 2, 1929 | |
| Kirk, A. L. | Calif. | Nov. 12, 1934 | |
| Kirkpatrick, D. B. | Calif. | Apr. 3, 1931 | |
| Klein, Dan | N. Y. | Apr. 9, 1932 | |
| Koehler, A. G. and Koehler, E. T. | Conn. | Oct. 17, 1927 | |
| Kohorn, S. N. and Gup, M. | Ala. | Dec. 8, 1925 | |
| Kouchel, George | N. Y. | Jan. 5, 1929 | |
| Kragen, M. | Calif. | Mar. 24, 1930 | |
| Kramer, M. S. | N. Y. | Nov. 20, 1928 | |
| Kraus, Joseph | Calif. | Sept. 11, 1929 | |
| Kretzer, L. and Seger, C. | N. Y. | July 9, 1928 | |
| Laidhold, Nat | N. Y. | Nov. 13, 1928 | |
| Lamb, B. W. | Kan. | Oct. 2, 1928 | |
| LaMaskin-Berger Co. | Ill. | Nov. 7, 1934 | |
| Larkin Automotive Parts Co. | Ohio | June 7, 1928 | 18 Fed. (2d) 29 |
| Larkin Automotive Parts Co., et al. | Ill. | June 1, 1928 | 19 Fed. (2d) 944<br>19 Fed. (2d) 939 |
| Lever, E. S. and D. M. | Calif. | Mar. 10, 1930 | |
| Leseberg, W. L. | Calif. | Dec. 16, 1929 | |
| Leterstone Sales Co. | Ill. | Dec. 20, 1926 | |
| Linden Auto Sales Co. | N. Y. | Feb. 4, 1930 | |
| Livingston, S. S. | Calif. | June 15, 1931 | |
| Lloyd, A. S. | Calif. | Dec. 2, 1929 | |
| Lovering, Charles E. | Ohio | June 8, 1925 | |
| Lowe Motor Supplies Co. | N. Y. | Apr. 16, 1927 | |
| Lyman Manufacturing Co. | Ohio | Mar. 18, 1927 | 18 Fed. (2d) 29 |
| Lyons, J. S. | Okla. | Apr. 9, 1925 | |
| McCauley, C. et al. | Tex. | Mar. 17, 1928 | |
| McCracken, L. S. | Okla. | Oct. 9, 1929 | |
| Maher, Richard D. | Mich. | Mar. 12, 1928 | |
| Malisoff, Fanny | Calif. | Nov. 29, 1929 | |
| Mandel, Conrad | Ill. | Sept. 22, 1927 | |
| Manhattan Mirror Works | N. Y. | Feb. 19, 1930 | |
| Marcus, Henry | Ill. | Sept. 6, 1924 | |
| Marshall-Wells Co. | Minn. | Jan. 2, 1929 | |
| Martin, James | N. Y. | Feb. 23, 1928 | |
| Matras & Sons, Inc. | Wis. | Oct. 14, 1927 | |
| May Screw Products Co. | Mich. | Jan. 8, 1932 | |
| Mee-Oakes Co. | Okla. | Jan. 4, 1926 | |
| Midwest Machinery Products Co. | Ill. | May 6, 1925 | |
| Miller Company | Tex. | Mar. 17, 1928 | |
| Miller, Otto A. | Ohio | May 13, 1926 | |
| Miller's Brass Fitting Co., Inc. | N. Y. | July 3, 1928 | |
| Mills Morris Co. | Tenn. | Apr. 27, 1928 | |
| Min-a Max Company | Minn. | Oct. 29, 1934 | |
| Minthorn, L. L. | N. Y. | Sept. 12, 1928 | |
| Moore-Handley Hardware Co. | Ala. | Dec. 16, 1927 | |
| Moore Hardware & Iron Co. | Colo. | Apr. 9, 1929 | |
| Moore, John M. | Okla | June 11, 1927 | |
| Moore, L. L. and Wood, J. Carlisle | Tex. | Nov. 2, 1932 | |
| Morgan, G. B. et al. | Tex. | June 28, 1932 | |
| Morgan Manufacturing Co., Inc. | Del. | Sept. 5, 1928 | |
| Morris, M. E. | Calif. | Mar. 10, 1930 | |

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Morris, Vernon | Calif. | Dec. 20, 1929 | |
| Morrison's, Inc. | Utah | Aug. 31, 1929 | |
| Motive Parts Co. of America | Ill. | Dec. 27, 1928 | |
| Motor Equipment Co. | Kan. | Mar. 15, 1928 | |
| Motor Parts Co. | Pa. | Jan. 24, 1930 | |
| Motor Parts Depot, Inc. | Tex. | June 4, 1926 | |
| Muller, W. J. and F. B. | Calif. | Dec. 13, 1929 | |
| Munoz, Alfred | N. Y. | Nov. 15, 1928 | |
| Nath, Louis | N. Y. | Nov. 17, 1934 | |
| National Acme Co. | Ohio | June 30, 1925 | |
| National Auto Electric Co. | N. Y. | Nov. 13, 1928 | |
| National Lubricator Corp. | N. Y. | June 18, 1929 | |
| National Service Co. | D. C. | May 13, 1926 | |
| New Britain Machine Co. | Conn. | Sept. 10, 1927 | |
| New England Mills Co. | Ill. | Mar. 16, 1926 | |
| Nichoalds Co. | Mich. | Feb. 25, 1927 | |
| Nichols, Dean & Gregg | Minn. | Nov. 14, 1928 | |
| Nielsen, Walter | Calif. | Mar. 10, 1932 | |
| Norris, John E. | Mich. | Feb. 6, 1928 | |
| Nurkiewicz, Ignatius | N. Y. | Jan. 5, 1929 | |
| Nusbaum Motor Supply Co. | Mich. | Dec. 30, 1929 | |
| O. K. Manufacturing Co. et al. | Ohio | Dec. 13, 1927 | 18 Fed. (2d) 2 |
| Olson, Fred L. | Kan. | Dec. 6, 1926 | |
| Orgill Bros. & Co., Inc. | Tenn. | Jan. 5, 1931 | |
| Orr Iron Co. | Ind. | Oct. 10, 1927 | |
| Pacific Lubrication Engineering Co. | Calif. | Mar. 14, 1932 | |
| Paco Accessories, Inc. | Ohio | Apr. 29, 1932 | |
| Paine, Kenneth, and Houde, A. | Mass. | Jan. 24, 1932 | |
| Parts Engineering Co. | Pa. | Feb. 20, 1928 | |
| Paysen, Andrew | Iowa | Nov. 2, 1926 | |
| Pearlman, William | Ill. | June 16, 1927 | |
| Peck Spring Co. | Conn. | Dec. 12, 1927 | |
| Peerless Automatic Machine Co. | Ohio | Sept. 27,1928 | 18 Fed. (2d) 29 |
| Pep Auto Supply Co. | Pa. | Nov. 16, 1928 | |
| Peterson, B. W. | Conn. | Nov. 26, 1929 | |
| Phillips, V. O. | N. Y. | May 23, 1935 | |
| Phipps, F. H. and Duffey, A. F. | Tex. | May 24, 1929 | |
| Pittsburgh Parts Mfg. Co. | Pa. | Sept. 23, 1927 | |
| Pittsburgh Tire Sales Co. | N. Y. | Dec. 12, 1927 | |
| Plant Co. | Minn. | | |
| Poncher, Louis | Ill. | June 16, 1927 | |
| Porte Mfg. Co. | N. Y. | June 26, 1926 | |
| Post & Lester Co. | Conn. | Nov. 8, 1927 | |
| Pruden Hardware Co., W. E. | N. Y. | Apr. 26, 1927 | |
| Quaker Auto Supply Stores | Pa. | Dec. 7, 1928 | |
| Ramsey Motor Service, Inc. | Minn | Nov. 14, 1928 | |
| Ready Auto Supply Co. | N. Y. | Dec. 30, 1927 | 22 Fed. (2d) 331 |
| Rex Metal Mfg. Co. | Pa. | Oct. 10, 1934 | |
| Rhode Island Machine & Tool Co. | R. I. | July 9, 1921 | |
| Rieth, Harvey L. | Ohio | June 8, 1925 | |
| Riggs Tire & Supply Co. | Ohio | June 18, 1927 | 18 Fed. (2d) 29 |
| Riley, P. J. | Ohio | Nov. 16, 1928 | |
| Robertson, William & Sons | Ill. | Apr. 15, 1930 | |
| Robey, H. C. and B. T. | Wash. | June 17, 1926 | |
| Rockmore, N. and Gross, L. | N. Y. | Jan. 3, 1930 | |
| Rogers, G. S. and Dusenberry, R. W. | Pa. | Jan. 19, 1934 | 74 Fed. (2d) 101<br>5 Fed. Supp. 940 |
| Roth & Schlenger, Inc. | N. J. | Dec. 16, 1931 | |

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Samuel, I. and B. and J. | Pa. | Feb. 7, 1930 | |
| Saslove, A. and Fisher, S. | Mich. | Jan. 15, 1931 | |
| Sayer, R. S., Jr. | Pa. | Jan. 21, 1930 | |
| Scheffer & Rossum Co. | Minn. | Nov. 14, 1928 | |
| Schlegel, N. | Calif. | Sept. 11, 1929 | |
| Schneer, Emil | N. Y. | Nov. 14, 1928 | |
| Schwartz, D. et al. | N. Y. | Nov. 20, 1928 | |
| Scott, John P. | D. C. | Feb. 8, 1926 | |
| Scott, Carl L. | Calif. | Feb. 5, 1930 | |
| Scovill Mfg. Co. | Conn. | Aug. 14, 1925 | |
| Seedman Automotive & Radio Co. Inc. | N. Y. | Oct. 26, 1929 | |
| Seigel, David | Iowa | Apr. 28, 1924 | |
| Self, J. M. | Pa. | Apr. 9, 1925 | |
| Seltzer & Harwitz | Pa. | June 22, 1930 | |
| Shadbolt & Boyd Co. | Wis. | Oct. 21, 1927 | |
| Shawnee Motor Supply Co. | Okla. | Mar. 24, 1927 | |
| Sheridan Auto Supply Co. | Ill. | Oct. 15, 1929 | |
| Sickler, C. F. and Gebhart, G. | Calif. | Feb. 9, 1933 | |
| Siefert, Charles et al. | Ohio | Apr. 11, 1932 | |
| Simmons Mfg. Co. | Ohio | Dec. 5, 1927 | |
| Simon, D. and Feuer, M. | N. Y. | Apr. 23, 1930 | |
| Smith, Barney, and Smallwood, Fred | Tex. | Jan. 15, 1934 | |
| Smith, R. L. | Calif. | | |
| Snow, William and R. H. | Wash. | Oct. 1, 1928 | |
| Sol's Auto Supply | Calif. | Jan. 5, 1932 | |
| Sommer, Herman C. | Calif. | June 7, 1932 | |
| Southern Motor Supply Co. | Okla. | Apr. 9, 1925 | |
| Southwestern Mfg. Co. | Texas | Mar. 18, 1935 | |
| Specialty Sales & Service, Inc. | Minn. | Dec. 26, 1931 | |
| Specialty Sales & Service Corp. et al. | Minn. | Aug. 7, 1935 | |
| Sper, Norman L. | N. Y. | Nov. 21, 1929 | |
| Staff, John | N. Y. | Aug. 6, 1926 | |
| Staff, Joseph | N. Y. | May 21, 1931 | |
| Stage, C. C. and Miller, J. L. | Neb. | Oct. 2, 1931 | |
| Standard Products Mfg. Co. | Del. | Jan. 9, 1926 | 19 Fed. (2d) 937 |
| Stetson, John P. | N. Y. | Oct. 18, 1928 | |
| Stone-Frank Co. | Tex. | Jan. 28, 1928 | |
| Tacoma Auto Supply Co., Inc. | Wash. | Apr. 24, 1933 | |
| Taubman Automotive Co. | Md. | Mar. 15, 1927 | |
| Tharp Machine Products Co. | Ill. | Oct. 15, 1929 | |
| Triangle Automotive Parts Co. | Wash. | Oct. 16, 1933 | |
| United Grease Gun Corp. | N. Y. | Sept. 6, 1929 | 40 Fed. (2d) 549 |
| United States Auto Supply Co, Inc. | N. Y. | July 11, 1929 | |
| United States Screw & Stamping Co. | Mass. | May 9, 1928 | |
| Universal Automotive Supply Co. | Ill. | Oct. 15, 1929 | |
| Up-to-Date Machine Works | Ill. | Jan. 8, 1925 | |
| Van Horbek, W. C. | Utah | Dec. 9, 1925 | |
| Vaughn Auto Supply Co. | Calif. | Nov. 29, 1929 | |
| Vesuvius Corp. | Ill. | Sept. 22, 1927 | |
| Wag's Auto Accessories | Ohio | June 18, 1927 | 18 Fed. (2d) 29 |
| Wagner, Paul G. | Calif. | Nov. 17, 1931 | |
| Wallach Bros. Co. | Ohio | Dec. 13, 1927 | |
| Walsh Tire Co. | Ill. | Jan. 12, 1926 | |
| Warner, Benjamin | Ill. | Feb. 12, 1923 | |
| Warner Hardware Co. | Minn. | May 7, 1926 | |

| Defendant | | Date of Decree | Reported |
|---|---|---|---|
| Warnke, F. W. | N. Y. | Apr. 2, 1930 | |
| Webb, A. E. and C. | Okla. | Dec., 14, 1929 | |
| Wellworth Auto Supply Co. | N. Y. | June 28, 1926 | |
| Western Auto Supply Co. | Mo. | Mar. 23, 1926 | |
| Whittle, William H. | Ohio | June 8, 1925 | |
| Wildenberg, Chas. | N. Y. | July 16, 1935 | |
| Winner, M. A. and Stone, C. C. | Ill. | Feb. 17, 1926 | |
| Wisco Products, Inc. | Wis. | Feb. 9, 1934 | |
| Wronker, H. A. | Ill. | June 16, 1927 | |
| W. S. Auto Supply Co., Inc. | Tex. | Apr. 9, 1927 | |
| Yankee Automotive Trading Co. | N. Y. | Oct. 2, 1934 | |
| Yant, D. L. et al. | Calif. | Jan. 30, 1933 | |
| Yeamans, W. H. | Calif. | Oct. 8, 1934 | |
| Yellow Cab Co. | Calif. | Dec. 13, 1929 | |
| Zimmerlin, J. and A. P. and L. | Calif. | Dec. 2, 1929 | |
| Zumpano, Edward | N. Y. | Nov. 5, 1930 | |

## C.

## A Concise Statement of the Grounds on Which the Jurisdiction of this Court Was Invoked and Assumed.

This suit is before this Court upon the petition of the plaintiff, The Bassick Manufacturing Company, for a writ of certiorari to review the decision and decree of the United States Circuit Court of Appeals for the Sixth Circuit, rendered November 14, 1934 (73 Fed. (2d) 543), directing that the bill of complaint be dismissed. A petition for rehearing was denied January 14, 1935. The petition for a writ of certiorari was filed April 13, 1935.

The discretionary power of this Court to grant a writ of certiorari was invoked upon the ground that

> "The decision of the Sixth Circuit Court of Appeals sought to be reviewed is in direct conflict with the decisions of several other circuit courts of appeal relative to the Gullborg patent (and in conflict also with the previous decisions of the Sixth Circuit Court of Appeals in several other cases)."

The petition for writ of certiorari was granted by this Court on May 20, 1935.

## D.

## A Concise Statement of the Case.

**(The Following Statement Includes Substantially the Statement of the Case As Presented in the Petition for Writ of Certiorari and Brief in Support Thereof.)**

An ordinary patent infringement suit in equity was brought August 16, 1926 (Rec., p. 1) in the United States District Court for the Western District of Tennessee, Western Division, on patents to Arthur V. Gullborg No. 1,307,734, issued June 24, 1919 (Rec., p. 411), and to Oscar U. Zerk No. 1,475,980, issued December 4, 1923 (Rec., p. 418), charging an infringement thereof by the respondent, The R. M. Hollingshead Company, in the sale of certain lubricating devices, and praying an injunction and an accounting.

The Hollingshead Company, in so far as the Gullborg patent is concerned, sold two kinds of equipment known throughout a rather extensive litigation as "suction effect" and "non-suction effect" compressors and couplers. Petitioner, by its petition, brought before this Court for review so much of the decree of the Circuit Court of Appeals for the Sixth Circuit as held the sale by the Hollingshead Company of "suction effect" couplers and their associated compressors not to be an infringement of the claims of the Gullborg patent.

The case was tried at final hearing in the District Court and a "decree" was entered on May 25, 1928 (Rec., p. 533). The Hollingshead Company took an

appeal* from that decree but the appeal was dismissed by the Sixth Circuit Court of Appeals as being from an order confirming a special master's report upon collateral issues, and making permanent a preliminary injunction but without determination of the fundamental issues of validity and infringement and, therefore, non-appealable (*Hollingshead* v. *Bassick*, 50 Fed. (2d) 592; petition for rehearing denied 53 Fed. (2d) 470). The cause was then submitted to the District Court upon the record made prior to the first attempted appeal. This resulted in a second decree holding that the sale of compressors and couplers of the type exemplified in Exhibit A filed with the affidavit of Beezley (suction effect) and Exhibit A filed with the affidavit of Cumming (non-suction effect) constituted infringement of claims 1, 2, 3, 4, 5, 6, 8, 10, 14 and 15 of Gullborg patent No. 1,307,734.

The opinion of the Sixth Circuit Court of Appeals reversing the decree of the District Court is reported at 73 Fed. (2d) 543. The order denying the petition for rehearing entered on January 14, 1935, is not reported, but appears in the record at p. 617.

The decision of the Sixth Circuit Court of Appeals sought to be reviewed is in direct conflict with the decisions of several other circuit courts of appeal relative to the Gullborg patent (and in conflict also with the previous decisions of the Sixth Circuit Court of Appeals in several other cases).

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* Mr. Chief Justice Hughes appeared on the brief as one of the counsel for The R. M. Hollingshead Co. in connection with this first appeal to the Sixth Circuit Court of Appeals. His appointment to the United States Supreme Court occurred prior to the oral arguments upon this appeal. This first attempted appeal by the Hollingshead Co. was dismissed by the Sixth Circuit Court of Appeals. In its first appeal the Hollingshead Company did not argue or contend that its suction effect couplers were not sold in contributory infringement of claims 1, 2, 3, 4, 5, 6, 8, 10, 14 and 15 of the Gullborg patent. It had not even assigned error on this score. In its first appeal, in which Mr. Justice Hughes appeared as counsel, the sole contention was that certain non-suction effect couplers did not infringe claims 14 and 15 of the Gullborg patent.

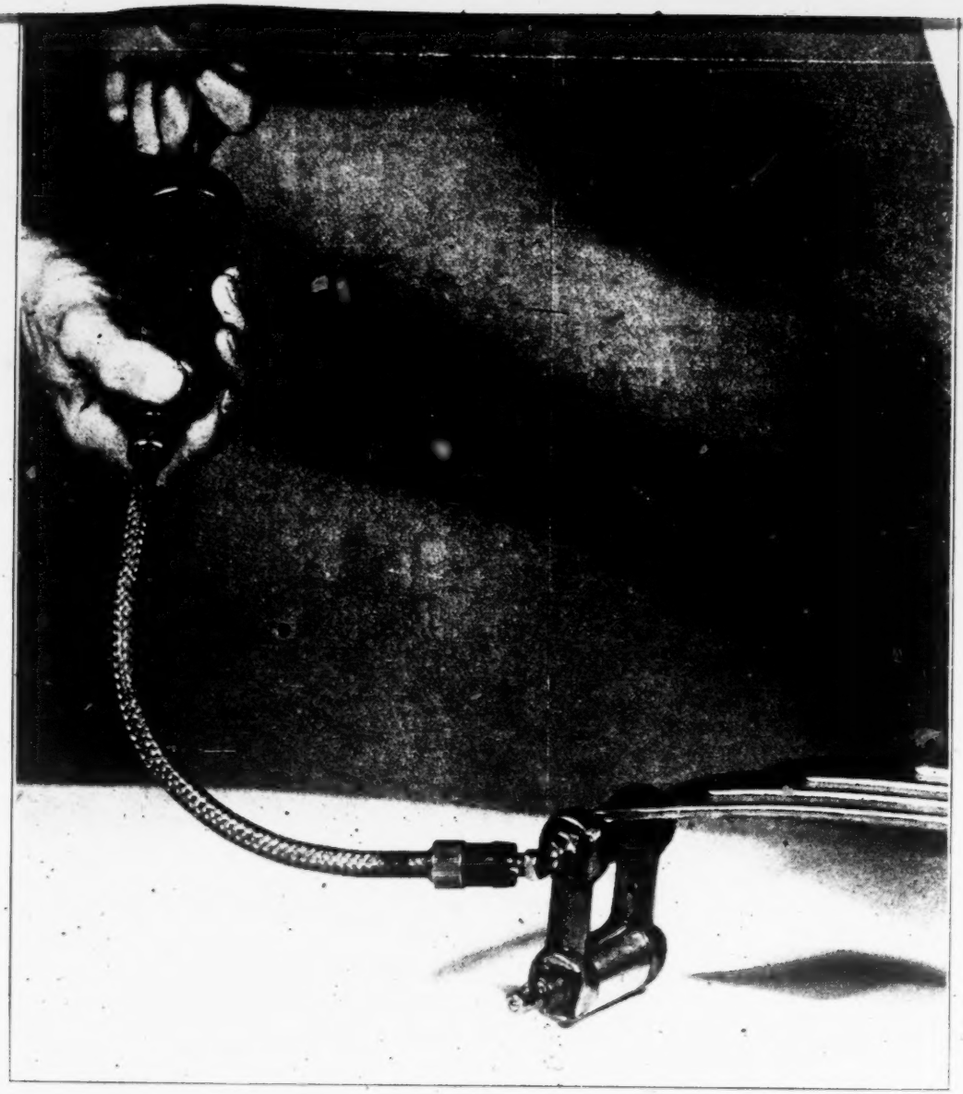

FIG. B.

This is a photograph of the Exhibit "Alemite" lubricating equipment as manufactured and sold by the plaintiff under the Gullborg patent in suit. Each bearing is equipped permanently with a "pin fitting" (i. e., a tubular member having its outer end flanged inwardly to provide a seat for a ball check valve. This tubular member is screwed into the hole leading to the bearing to be lubricated. It has a cross-pin extending diametrically across and through the bore of the tubular member, and projecting from both sides thereof. There is a ball check valve at the inlet end of the pin fitting. It is held to its seat by a small coiled spring which rests upon the cross-pin). The barrel of the grease compressor or "grease gun" is filled with grease. A screw-threaded piston rod is rotated to advance the piston within the barrel of this compressor, whereupon grease is forced through the conduit to a coupler. The coupler can be quickly attached to any pin fitting whereby grease may be forced under high pressure from the barrel of the grease gun into the interstices of the bearing to be lubricated. After the requisite grease has been forced into one bearing and the pressure is relieved, the coupler is detached from the first pin fitting and attached to a second pin fitting associated with a second bearing, whereupon the greasing operation is repeated.

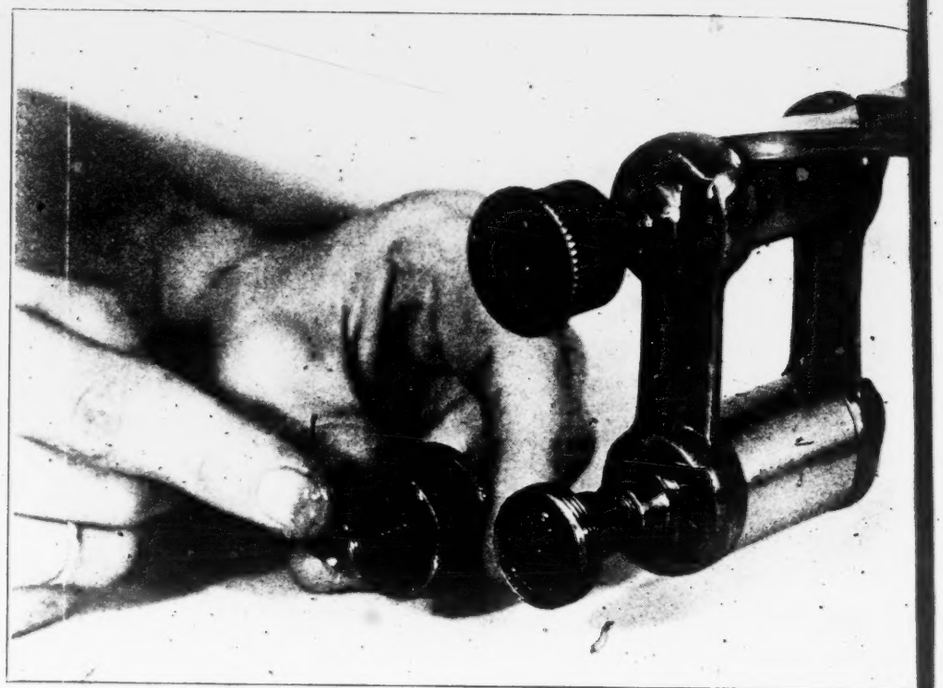

FIG. A.

This photograph of Plaintiff's Exhibit 1 shows the spring shackle bolts equipped with old-fashioned grease cups of the kind universally used prior to the advent of the Gullborg invention in 1917. The threaded stud was screwed into the end of a hole leading to the bearing to be lubricated. An internally screw-threaded cup was filled with grease scooped out of a pail on the end of a stick or knife, or more frequently by a man's finger. This cup was then screwed over the externally threaded end of the stud, thereby squeezing the grease through the hole into the bearing (and squeezing a good deal of it out through the loose threaded engagement between the stud and the cup). As the bearing ran dry the cup was from time to time screwed farther over the end of the stud, thereby squeezing more grease into the bearing. When all of the grease in the cup had been squeezed into the bearing, the cup was unscrewed from the exposed end of the stud and refilled with new grease.

The use of these old-fashioned grease and oil cups was almost completely displaced by the lubricating system of the Gullborg patent in suit.

Prior to the advent of the Gullborg lubricating system in 1917 (Exhibits A and B, page 127), the universal practice was to lubricate the chassis bearings of automobiles and the similar bearings of other machines by the use of oil cups or grease cups of the kind illustrated in the accompanying photograph, Figure A, of Plaintiff's Exhibit 1, Rec., p. 48.

Claims 1, 2, 3, 4, 5, 6, 8 and 10 of the Gullborg patent No. 1,307,734 (Rec., p. 411) describe a lubricating system for automobiles or other machines, in which a "pin fitting" is permanently screwed into a hole leading to the bearing to be lubricated. Each bearing is permanently equipped with one pin fitting. See Fig. B. A grease gun or compressor can, by means of Gullborg's coupler, be quickly attached to and detached from each of the several pin fittings in succession. The gun or compressor is first filled with grease. When, therefore, it is attached to one of the pin fittings by means of the coupler, its piston can be operated in such a way as to force grease under high pressure through the coupler and the pin fitting, into the bearing to be lubricated. Upon discontinuing the pressure in the grease gun by arresting the forward movement of the piston or by retracting the piston of the compressor, the associated coupler may be detached from the one pin fitting and subsequently attached to another pin fitting.

It was the construction and mode of operation of the coupler and the pin fittings, in combination with the grease gun, which constituted Gullborg's invention and led to the commercial adoption of Gullborg's lubricating system to an extent such as to have displaced, almost completely, every other known means for the lubrication of the chassis bearings of automobiles. (Rec., p. 123.) The plaintiff, The Bassick Manufacturing

Company (and its successors, Alemite Corporation and Stewart-Warner Corporation), has sold more than five hundred million of the pin fittings and tens of millions of compressors and couplers for use in combination therewith. (Rec., p. 125.)

The complete combination of the patent cannot be assembled by the manufacturer. It is only the ultimate user who does that,—because it is only the ultimate user who has occasion to couple the compressor to a pin fitting. In this respect the Gullborg patent is like that of the Berliner patent involved in the case of *Leeds & Catlin* v. *Victor*, 213 U. S. 301, 325, where the claimed combination involved the disc record, tone arm, and stylus of a phonograph. It was only the ultimate user who brought together or "combined" the tone arm and stylus with the disc record.

The various parts of the Gullborg lubricating system are of a character which can be manufactured with standard machinery of inexpensive type. This fact, coupled with the enormous demand for the Gullborg equipment, have led hundreds of concerns to engage in the manufacture and sale of some or all of the parts of the Gullborg equipment in infringement of the patent in suit.

Some of the many infringers of the Gullborg patent have sold the pin fitting parts only; others have sold the compressor and coupler parts only.

Almost all of the many suits for infringement of the Gullborg patent have therefore involved mainly questions of contributory infringement.

In the present case the Hollingshead Co. sold only the compressor and coupler parts of the complete combination. It did so with the expectation and intention that the purchaser would combine them with the pin

fitting parts manufactured and sold by the plaintiff or by others.

This brief explanation of the invention of the Gullborg patent will enable us to state concisely and exactly the conflict between the decision of the Sixth Circuit Court of Appeals in this Hollingshead case and the decisions of other courts of appeal in other cases, and, indeed, to state the conflict between the decision of the Sixth Circuit Court of Appeals in the Hollingshead case and the previous decisions of the same Sixth Circuit Court of Appeals in seven other cases. In stating this conflict we shall quote exactly the statement appearing on pages 5 to 8, inclusive, of our petition for a writ of certiorari.

> "In the case of *Larkin* v. *Bassick*, 19 Fed. (2d) 944, the Court of Appeals for the Seventh Circuit held that the Larkin Company's sale of certain couplers, together with their associated compressors, for intended use in combination with the plaintiff's 'Alemite' pin fittings, was a contributory infringement of claims 1, 2 and 6 of the Gullborg patent in suit. In its decision rendered November 14, 1934 (73 Fed. (2d) 543), in the present case, the Sixth Circuit Court of Appeals held that the Hollingshead Company's sale of the same identical couplers (together with their associated compressors) for intended use in combination with the plaintiff's 'Alemite' pin fittings, was not a contributory infringement of these same claims 1, 2 and 6 of the Gullborg patent.
>
> "The *complete* identity of the couplers sold by the Hollingshead Co. in the one case with those sold by the Larkin Company in the other case, was due doubtless to the fact that the couplers sold by Hollingshead were manufactured for Hollingshead by Larkin prior to the time that Larkin had been enjoined against the further sale of these couplers. This common source of these identically similar

couplers as sold by the two companies, is alluded to in the opinion by Judge Denison of the Sixth Circuit Court of Appeals, 50 Fed. (2d) 592 (rehearing denied 53 Fed. (2d) 470), wherein the first attempted appeal of the Hollingshead Company was dismissed. In this opinion Judge Denison said:

> "'In *Lyman Mfg. Co.* v. *Bassick Mfg. Co.*, 18 F. (2d) 29, we held the Gullborg patent No. 1,307,734 valid as to certain claims and contributorily infringed by Larkin through the sale of his compressor or grease gun for the purpose of being used in connection with plaintiff's pin fittings to make up the combination described in these claims. . . . The Hollingshead Company, through a subsidiary at Memphis, had been purchasing and selling these Larkin devices, thus held to infringe these two patents. On account of such sales, the Bassick Company brought, in the court below, this suit complaining of the infringement of these two patents. Upon due application a preliminary injunction issued, which was expressly directed against the further sale of these Larkin devices.'
>
> "The record in the present (Hollingshead) case does not show that the Hollingshead Co. purchased its couplers (and the associated compressors) from the Larkin Co. It does, however, show the exact and complete identity of the couplers sold by Hollingshead with those sold by Larkin. The Larkin Company's sales of these couplers were held by the Seventh Circuit Court of Appeals to be a contributory infringement. The Hollingshead Company's sales of identically the same couplers were held by the Sixth Circuit Court of Appeals not to be a contributory infringement.[2]

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[2] Some of the guns or compressors in association with which the Hollingshead Co. sold its couplers, differed in immaterial respects from the compressors sold by Larkin prior to the commencement of the litigation against Larkin. Larkin was, however, compelled to discontinue the manufacture and sale of all of these slightly variant forms of compressors under the prior decision of the Sixth Circuit Court of Appeals, 18 Fed. (2d) 29,

"This latest decision of the Sixth Circuit Court of Appeals in this case of *Hollingshead* v. *Bassick* is not only in conflict with the decision of the Seventh Circuit Court of Appeals in *Larkin* v. *Bassick*, 19 Fed. (2d) 944, but also in conflict with the decisions of several other United States Circuit Courts of Appeal, but is indeed in conflict with the prior decision of the Sixth Circuit Court of Appeals in *Lyman* v. *Bassick* and six other cases reported in 18 Fed. (2d) 29.

"The conflict with the decision of the Seventh Circuit Court of Appeals can be most concisely stated, because the defendant's allegedly infringing coupler in the Larkin case (19 Fed. (2d) 944, C. C. A. 7) was identical with the defendant's allegedly infringing coupler in this Hollingshead case. In the other cases the defendants' couplers differed in some details from the Hollingshead Co's. couplers. In construction and in mode of operation these other couplers embodied all of the essential features of the coupler of the Gullborg patent. It is impossible to reconcile the holding that the Hollingshead Co's. coupler did not infringe with the holdings in the other case that the defendants' couplers did infringe. Indeed, it is impossible to reconcile the present holding of the Sixth Circuit Court of Appeals, that the Hollingshead Co's. coupler did not

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and under the decision of the Seventh Circuit Court of Appeals in 19 Fed. (2d) 944.

The details of the compressor are, however, of no consequence since the claims of the Gullborg patent describe the compressor part of the combination in such broad, general terms as "a pump" (claims 1, 2, 3, 4, 5 and 6), or "means for supplying lubricant to said conduit comprising a receptacle provided with a discharge outlet" (claims 8 and 10).

The opinion of the Sixth Circuit Court of Appeals in Lyman vs. Bassick and six other cases, 18 Fed. (2d) 29, devotes itself in detail to the Gullborg coupler, and in a footnote on page 35 disposes of the compressor part of the combination by saying merely:

> "Of course, in order to allow this vacuum and suction to develop, any heavy pressure on the grease must be stopped, either by the check valves used in some forms, or by the release of the plunger pressure, or both, and, if there is any failure in this relief, the grease, perhaps after momentary retraction, will continue to exude."

The Hollingshead Co.'s couplers were sold with compressors having these check valves or means for releasing the plunger pressure, or both.

infringe, with the same Court's holding in *Lyman* v. *Bassick* and six other cases (including Larkin) that the defendants' couplers did infringe. The present decision of the Sixth Circuit Court of Appeals is, therefore, in direct conflict with the following decisions:

*Larkin* v. *Bassick* (C. C. A. 7), 19 Fed. (2d) 944.

*Bassick* v. *Adams* (C. C. A. 2), 52 Fed. (2d) 36.

*Lyman* v. *Bassick* and six other cases (C. C. A. 6), 18 Fed. (2d) 29.

*Rogers* v. *Alemite* (C. C. A. 3), 74 Fed. (2d) 1019.[3]"

It was upon the basis of the facts hereinabove outlined that the Bassick Company's petition for a writ of certiorari was applied for and granted.

## Petitioner's Business Under the Gullborg Patent in Suit.

Mr. Gullborg and his father began the sale of lubricating equipment substantially identical with that shown in the Gullborg patent in suit in 1917, the business being conducted under the name of Alemite Die Casting & Manufacturing Company. (Exhibit 3A, page 20.) The patent and such business as Mr. Gullborg had developed up to that time were acquired by the petitioner in 1919. (Exhibit 3A, p. 122.)

In 1919, petitioner began the manufacture and sale of "Alemite" lubricating equipment under the protection of the Gullborg patent in suit No. 1,307,734. That

[3] This present decision of the 6th C. C. A. is in conflict also with the decisions of many district courts under the same Gullborg patent. The invention of the Gullborg patent so completely replaced every other known means of lubricating the chassis bearings of automobiles and other machines that there has been a very great temptation to infringe it. The plaintiff's contentions relative to the infringement of the Gullborg patent have been fully sustained in all of the suits previously listed in this brief.

business has continued down to the present time. This lubricating equipment comprises "pin fittings" which are screwed or attached to the bearings of automobile and other machinery, and compressors and couplers for use in conjunction with the fittings for introducing the lubricant into the bearings. Specimens of the equipment are in evidence as Plaintiff's Exhibit B, Otis testimony—assortment of Alemite pin fittings, and Exhibit A, Otis testimony—small hand type compressor, hose and coupler. Petitioner manufactured and sold a full line of pin fittings for various types of bearings and a large line of compressor outfits as illustrated in Plaintiff's Catalog, Exhibit E, Otis Testimony.

Each Alemite pin fitting is exactly like every other Alemite pin fitting in so far as the receiving or connecting end is concerned. The fittings differ only in the end which is attached to the bearing, that is, they have different sizes and kinds of threads or securing means. Each compressor outfit, whether small or large, terminates in an Alemite coupler and is adapted to receive an Alemite pin fitting and to make a quickly attachable and detachable leak-proof and otherwise satisfactory connection therewith.

No two pieces of machinery have exactly the same number of bearings, located in exactly the same way. What the purchaser desires, therefore, is to buy a combination comprising a compressor of appropriate size or type, and an assortment of fittings adapted to fit the requirements of his particular machine, and a coupler by means of which the compressor may be successively connected with each of the several pin fittings.

In consonance with these requirements of purchasers, the Bassick Company, after first attempting to market the Alemite equipment in predetermined

"sets," adopted the policy of separately listing and pricing all of the component parts of the complete combination, thereby allowing each purchaser to procure the assortment best adapted to his needs.

A predetermined "set" such as it was first attempted to market comprised, for example, 32 Alemite "straight" fittings with 1/8" pipe thread to be screwed into a 1/8" pipe threaded hole leading to a bearing; 16 "90° elbow" fittings with 1/8" pipe thread; 8 "45° elbow" fittings with 1/8" pipe thread; 2 "extra long straight" fittings with 1/8" pipe thread; 1 "straight" fitting with 1/4" pipe thread; and 1 "22½° elbow" fitting with 1/4" pipe thread and bronze check valve for water pump lubrication; together with one gun or compressor terminating in one coupler which could be successively attached to and detached from each of the several fittings. This "set" was adapted to supply all of the chassis bearings of, say, a "Pierce-Arrow" large size, 1918 Model automobile.

This "set" or assortment was not, however, appropriate for the chassis bearings of any other make of automobile, nor indeed for any other Pierce-Arrow model.

The result of this effort to sell the Alemite lubricating equipment in sets appropriate to the requirements of each of the various makes and models of automobiles meant that every dealer must carry an enormous stock of complete sets. Furthermore, a farmer who acquired a set of Alemite lubricating equipment for his automobile soon found that he would like to increase his "repertory" in such a way as to enable him to use the same compressor and coupler in greasing his mowing machine. He wished, therefore, to buy nine additional pin fittings, without, however, being required to buy an additional compressor and coupler.

In order to eliminate the need of carrying large and slow-moving stocks of Alemite equipment which dealers would otherwise be required to carry, and to meet the desires and needs of the millions of people who wished to make use of the Alemite lubricating equipment on automobiles and other machinery of innumerable kinds, the Bassick Company soon adopted the policy of separately listing and pricing all of the component parts of the complete combination. This enabled dealers to put in stock a few compressors and couplers, together with, say, 1000 "straight," 500 "90° elbow" and 200 "45° elbow" pin fittings. It enabled any user of the Alemite system easily and cheaply to increase his repertory to include not only his automobile but his mower and his windmill and his churn. Under this method of stocking and selling the Alemite lubricating equipment, each purchaser was enabled to procure the assortment best adapted to his needs.

Although the Alemite lubricating system of the Gullborg patent enabled the owner of an automobile to grease his car much more easily and quickly than he had ever been able to do so before, and without covering himself with grease and grime, many automobile owners preferred to have the work of greasing done in a public garage. Garagemen, therefore, bought the compressor and coupler parts of the combination for use in conjunction with the pin fittings installed in the bearings of their customers' automobiles.

Garagemen found that the rapidity and facility with which they could grease "Alemite" equipped automobiles enabled them to do this work at a profit. Owners of fleets of automobiles found that one night worker could use one compressor and coupler in greasing all of the cars in his fleet. A demand was therefore created for larger and more powerful compressors and for

compressors operated by pneumatic or electric power rather than by hand power. The Bassick Company therefore manufactured such larger compressors terminating, however, in couplers identical with those of the smaller compressors, and sold them to garages, service stations, fleet owners, etc. (Rec., p. 135). The result was that within a few years any owner of an automobile could leave his compressor and coupler in the tool box of his car and drive into any garage or service station to have the garageman's compressor and coupler, combined with his own pin fittings, to inject grease into the bearings of his automobile.

Complete assortments of pin fititngs, compressors and couplers were sold to automobile manufacturers for the equipment of new automobiles. Complete assortments were sold to individual car owners to be used in substitution for the old-fashioned grease cups with which their cars were originally equipped. Extra pin fittings were sold to people who already had acquired one compressor and coupler. Extra compressors and couplers were sold to other people who wished to grease cars equipped with "Alemite" pin fittings.

This method of selling is rather unusual. The only close parallel is that of the phonograph. The Victor Talking Machine Company sold the Victor phonograph under the Berliner patent No. 534,543, involved in *Leeds & Catlin* v. *Victor*, 213 U. S. 301, and 213 U. S. 325. The Berliner patent covered the combination of the turn-table, stylus, tone arm, etc., and the disc record. Anyone could buy a phonograph machine in any one of a dozen sizes and styles and then select the disc records which struck his fancy. One purchaser would buy a small portable Victrola Style 23-A and fifteen Jazz band records. Someone else would buy the console style Victrola No. 141-C, together with twenty-five

Grand Opera records. The phonograph machines and the records were separately listed and priced, just as are the component parts of the Alemite equipment. In both cases the purchaser desires and enjoys the advantage of making up a selection to suit his particular needs.

No high pressure lubricating equipment comparable to the patented equipment had ever been manufactured or sold prior to the advent of petitioner's product on the market (Rec., p. 136).

Prior to the advent of Gullborg's invention, no one had ever manufactured or sold any kind of lubricating equipment in which each of the several bearings of an automobile or other machine could be equipped with any kind of a fitting or grease cup with which one single grease gun of any kind could be successfully attached and detached to force lubricant into the several bearings.*

### The Hollingshead Company's Business.

The Hollingshead Company has always been engaged primarily in the sale of carriage, harness, and automobile "chemicals," *i. e.*, top dressing, soap, wax, polish, and grease (Rec., p. 260). It has never manufactured any metal parts of any kind. It has never manufactured any lubricating equipment of any kind (Rec., p. 260). It bought the compressor and coupler parts of its lubricating apparatus from such infringers as the

* Some of the decisions of some of the courts erroneously refer to lubricating systems of this general character as having been "in use" prior to Gullborg's invention. There are some prior patents and publications which proposed the use of one single compressor for attachment to any one of several bearings through coupling mechanism of one kind or another. Not one of these proposed schemes ever went into any commercial use whatsoever, either before or since the advent of Gullborg's invention. (Rec., p. 136).

Larkin Automotive Parts Company and then sold them on such a "free gift" or other basis as would promote the Hollingshead Company's sales of its Whiz grease (Rec., p. 327).*

The only identification on behalf of the Hollingshead Company of any of the lubricating apparatus sold or proposed to be sold by it was by Roderick W. Smith,

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* The Bassick Company's "Adjudication Books," Exhibit No, 10 herein, contain orders and decrees enjoining hundreds of defendants against the further sale of spurious or so-called "gyp" Alemite and Alemite-Zerk fittings under the patents in suit. Counsel for the appellant assert in their briefs that the Hollingshead Company has never engaged in the sale of these "gyp" fitting parts of the complete combination, either as manufactured by the Larkin Company, or by any of the "blind-pig" counterfeiters. The manner in which the Hollingshead Company handled this phase of the business is reflected by the testimony of Mr. Beezley, relative to his negotiations for the purchase from the Hollingshead Company of one of the infringing compressors. His uncontradicted account of the conversation between himself and the Hollingshead Company's agent, Whittaker, is as follows:

"On the second day of April, 1926, a representative of The R. M. Hollingshead Company called on me for the purpose of selling me a service compressor, this being in response to a request made by me over the telephone. When the representative, Mr. Whittaker, arrived, the following conversation took place:

"Beezley: 'I have a number of customers whose cars are equipped with Alemite and Zerk lubricating system and I want to get a Service Compressor that I can use to grease these cars.'

"Whittaker: 'I have just what you want—I have a gun in all respects superior to the Alemite gun and which will fit Alemite and Zerk fittings for about one-half the cost of the Alemite gun. I will send out a gun and a man to demonstrate it to you.'

"Beezley: 'I also want to buy some fittings, but I cannot compete with the Alemite people, for I cannot pay the price they ask for the Alemite fittings.'

"Whittaker: 'We do not handle the fittings, **but we have a representative, Mr. R. J. Martinetti who is connected with a company that handles these fittings.** I will have him call on you and sell you some.'

"Mr. Whittaker sent me one of the Service Compressors on April 7, 1926, and also rendered me an invoice for $63.50.

"I file herewith the Service Compressor as Exhibit A; duplicate of the original order as Exhibit B; original invoice as Exhibit C; and a copy of the delivery ticket as Exhibit D.

"Several days after receiving the Service Compressor I called up the R. M. Hollingshead Company and requested that they send the representative who could sell me the pin fittings. He replied that he would and later in the day came by and told me **they were temporarily out but that in the next few days another representative of the Company, Mr. Martinetti, would find out where he could get some for me. He told me that Martinetti had a line on a place where he could get these fittings and could furnish them to me. He also said Martinetti had been selling them heretofore.**"

one of the Hollingshead Company's salesmen of soap, top dressing, grease, etc. We do not believe that Smith or any one else in the Hollingshead organization knew or cared very much about the details of the construction and mode of operation of the compressors and couplers which they purchased from Larkin and which they used in promoting their sales of Hollingshead grease. Just prior to the commencement of this suit against Hollingshead, and for two or three years thereafter, the Larkin Automotive Parts Company was dodging from pillar to post with one construction after another, after another, in an effort to escape the effect of the injunctions of the courts in the Sixth Circuit and in the Seventh Circuit, where Larkin had intervened in defense of one of its customers (*Larkin and Montgomery Ward* v. *Bassick*, 19 Fed. (2d) 939, 944, 23 Fed. (2d) 92). It is our belief that after the Hollingshead Company was preliminarily enjoined on March 21, 1927, it procured from the Larkin Company samples of whatever modified compressors and couplers the Larkin Company could devise, and by offering them in evidence in one way or another attempted to secure declaratory or other judgments which would be in conflict with the decrees and orders under which the Larkin Company was from time to time enjoined.

## A Concise Statement of the Question Involved.

The sole question involved before this Court is whether the Hollingshead Company's sales of couplers and compressors of the kind sold to D. A. Beezley on April 2, 1926 (Exhibit A, Beezley Affidavit) constituted a contributory infringement of Gullborg patent No. 1,307,734, and more particularly, claims 1, 2, 3, 4, 5, 6, 8 and 10 thereof.

**The Validity of the Gullborg Patent Has Been Conceded by the Respondent, Hollingshead Company.**

In its appeal of June 23, 1928, from the decree of the District Court (Rec., p. 526), the Hollingshead Company assigned as error that

> "3. The Court erred in holding claims 1, 2, 3, 4, 5, 6, and 8 of Gullborg patent No. 1,307,734, valid."

This assignment of error was, however, withdrawn in and by the brief filed in the Court of Appeals on behalf of the Hollingshead Company. Counsel said in their brief in this connection:

> "ASSIGNMENTS OF ERROR.
>
> "DEFENDANT'S ASSIGNMENTS OF ERROR ON APPEAL:
>
> "Assignments numbers 3, 13, 14 and 17 are herewith withdrawn.
>
> "Numbers 13 and 17 are withdrawn because the issue therein involved is of minor importance.
>
> "Number 14 relates to defendant's plea of *res judicata,* urged at final hearing, based upon *plaintiff's allegations* of privity in a certain other suit between the instant defendant and a certain other defendant corporation in said certain other cause in the New Jersey District, in which latter cause an absolute decree of dismissal had been entered. In view of a subsequent modification of said order of dismissal in the New Jersey cause on December 23, 1929, by which said order of dismissal in the New Jersey cause now becomes without prejudice to the plaintiff, the defendant's plea of *res judicata,* forming the basis of defendant's fourteenth assignment of error, is now withdrawn.

## "RECORD ON APPEAL.

"PARTS OF RECORD NOW DISCARDED BY WITHDRAWAL OF DEFENDANT'S ASSIGNMENT NUMBER 14:

"In view of the withdrawal of defendant's assignment of error number 14, a substantial part of the record relating solely to the question of *res judicata* is not now before this Court and need not be considered. For the convenience of this Court, attention is called to those parts of the printed record which need not be considered either on the appeal or on plaintiff's cross-appeal. These parts of the printed Record are:

"*Pages 90 to 129 inclusive;*—beginning with 'Amendment to Answer' on p. 90 and concluding with 'Order' on p. 129.

"*Pages 287 to 290 inclusive;*—testimony reproduced on these pages.

"*Pages 300 to 366 inclusive;*—exhibits reproduced on these pages.

"*Pages 375 to 420 inclusive;*—exhibits reproduced on these pages.

"MUCH OF REMAINING PART OF RECORD IRRELEVANT:

"Since the primary question before this Court is merely the scope of Gullborg's claims 14 and 15 and the scope of Zerk's claims 2, 3 and 5, a great deal of the record is irrelevant.

"Thus, Plaintiff's Exhibits 'J', 'K' and 'L' on pages 162 to 189 inclusive of record are reproductions of former petitions for rehearing in this Court and certiorari in the Supreme Court, in certain *Bassick* v. *Larkin and O. K. Mfg.* cases, on questions not here involved; on defenses not urged by this defendant-appellant.

"Likewise, too, Plaintiff's Exhibits 'M', 'O-3', 'O-4', 'O-6' and 'Q', on pages 191 to 195 inclusive of the record are drawings of devices enjoined by other District Courts following this Court's opinion in *Lyman* v. *Bassick, supra.*

> **"Thus, too, the Beezley affidavit and accompanying plaintiff's exhibits on pages 19 to 25 inclusive of the record and the Plaintiff's 'Exhibit A Beezley Affidavit' and Plaintiff's Exhibit No. 15, page 373 of record require no consideration because they relate solely to a defendant's device on which no appeal was taken.***
>
> "A great deal more of the record could thus be pointed out as without bearing on the questions this Court is called upon to decide, but we refrain from taking more space for this purpose, as we believe this Court will have no difficulty in separating the wheat from the chaff."

The Hollingshead Company's concession of the validity of the Gullborg patent was repeated in various ways throughout the brief of its counsel in the Court of Appeals, as, for example, on page 82, where in taking up the discussion of the other patent in suit (Zerk patent No. 1,475,980) counsel said:

> "*As in the Gullborg patent,* we start with an adjudicated patent, accept the decision of the Appellate Court, and urge the same defense, namely, non-infringement."

Precisely this same statement was made in the brief of counsel for the Hollingshead Company (p. 115) in its second appeal to the Sixth C. C. A.

This same concession of validity is implicit in the "conclusions" with which counsel for the Hollingshead Company closed their original main brief in the Court of Appeals. Thus, the concluding paragraphs of the

---

* We have set this paragraph in bold face type in order to emphasize the fact that the Hollingshead Company did not, upon its appeal to the Circuit Court of Appeals, question either the validity of claims 1, 2, 3, 4, 5, 6, 8 and 10 of the Gullborg patent, nor the Hollngshead Company's infringement of these claims by its sales of compressors and couplers like those constituting Plaintiff's "Exhibit A Beezley Affidavit." In other words, the Hollingshead Company did not even question the correctness of the contention which under the present writ of certiorari we are now making to this Court.

Hollingshead Company's brief in Appeal No. 5397 are as follows:

"CONCLUSION.

"We submit that claims 14 and 15 of the Gullborg patent should be interpreted to cover only Gullborg's *suctional* compressor in combination with the specific 'pin-fitting' recited therein (as they were interpreted in *Bassick* v. *Rogers*) and held not infringed, or they should be held invalid.

"We submit, also, that the Zerk patent is clearly not infringed because defendant is not selling the combination claimed by Zerk, is not selling either the nozzle or the lubricant receptacle of the Zerk combination, is not selling the nozzle that it does sell for adaptation to the Zerk lubricant receptacle, and is in fact only making a nozzle of the prior art adapted to be associated with a lubricant receptacle of the prior art to produce a combination of the prior art.

"Leonard L. Kalish,
Frank S. Busser,
Charles Evans Hughes,
Counsel for The R. M. Hollingshead Co.

"Burch, Minor & McKay,
Memphis, Tenn.,
Solicitors for The R. M. Hollingshead Co."

Obviously there is no contention or suggestion here that claims 1, 2, 3, 4, 5, 6, 8 and 10 of the Gullborg patent were not valid and infringed.

**In Its First Appeal No. 5397, the Hollingshead Company Did Not Question the Correctness of the Decree Holding It Guilty of Infringement in Selling Compressors and Couplers of the Kind Exemplified in Exhibit A, Beezley Affidavit.**

Reference to the Hollingshead Company's assignments of error (Rec., p. 526) will show that there is no assignment of error based upon the District Court's decree (Rec., p. 522) holding that the Hollingshead Company's sale of compressors and couplers of the kind sold to Beezley (Exhibit A, Beezley Affidavit) was a contributory infringement of the Gullborg patent in suit.

We have already quoted (on page 26 of this brief) parts of the subsequent brief in which counsel for the Hollingshead Company so far conceded infringement as to have led them to say,

> "Thus, too, the Beezley affidavit and accompanying plaintiff's exhibits on pages 19 to 25 inclusive of the record and the Plaintiff's 'Exhibit A Beezley Affidavit' and Plaintiff's Exhibit No. 15, page 375 of record, require no consideration because they relate solely to a defendant's device on which no appeal was taken."

It was only upon their second appeal (No. 6419) that some of the former counselors for the Hollingshead Company evolved a theory upon which to contend in the Appellate Court that the "grease gun" sold to Beezley did not involve a contributory infringement of the Gullborg patent,—of which, however, the validity was still conceded.

**The Only Question Which this Writ of Certiorari Presents to this Court Concerns this Belatedly Trumped-Up Theory and Contention of Non-Infringement in and by the Hollingshead Company's Sale of Compressors and Couplers of this "Beezley Type."**

We do not mean to suggest that counsel for the Hollingshead Company had never previously thought of contending that its sales of the "Beezley type" compressors and couplers did not involve an infringement. As a matter of fact, the deposition of an expert witness had been taken in an effort to represent the Beezley compressor as being of a kind such that its admittedly suction type coupler could not function to produce its "suction effect" (Rec., p. 196). In an effort toward the same end, arguments and demonstrations had been advanced to the District Court. It was, indeed, in the light and knowledge of all of the facts in this regard that all of the original counselors for Hollingshead in the Court of Appeals deliberately withdrew any contention of non-infringement. It was not, therefore, in connection with the first appeal, but only in connection with the second appeal that the contention of non-infringement was advanced, and then only, as we shall see, by the assertion of alleged facts in contradiction of the record and of the real facts.

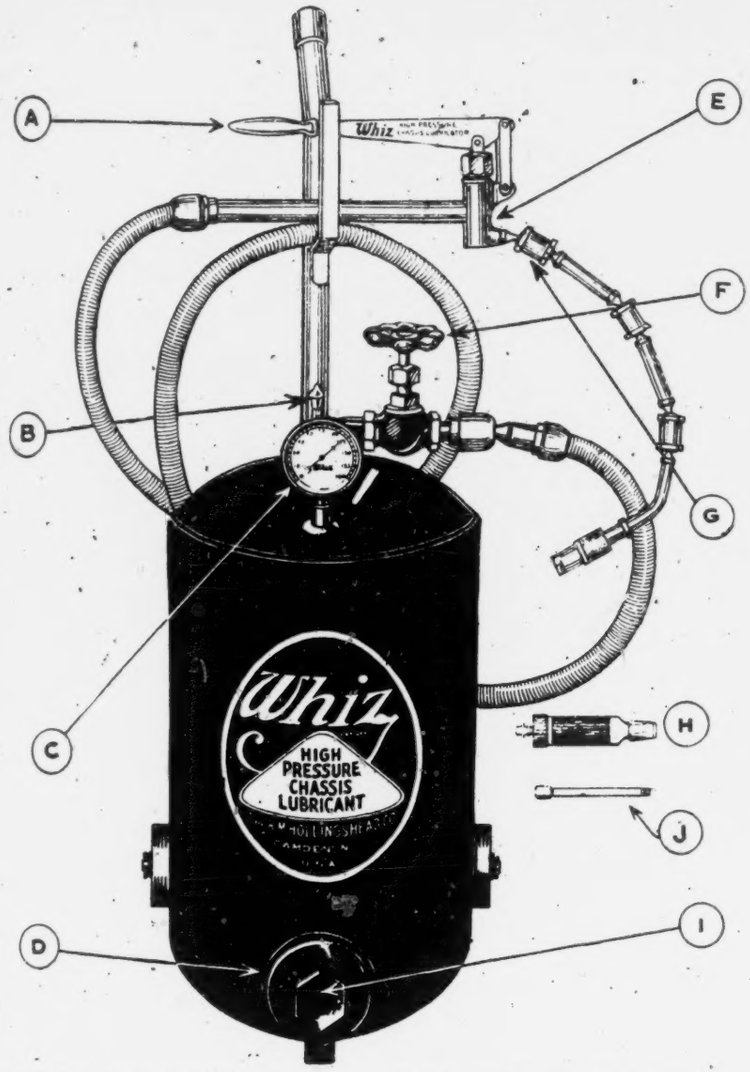
## A Picture of the Hollingshead Compressor and Coupler of the Kind Sold to Beezley.

Although the physical device which Hollingshead sold to Beezley is in evidence as Plaintiff's Exhibit A Beezley affidavit, we have thought that it might be convenient to the Court to have before it a picture of this device, and have here reproduced, therefore, a page of the Hollingshead Company's advertising literature, reproduced by counsel for Hollingshead as the last page of an appendix to its brief in its appeal No. 6419. Facing it we have reproduced also a page of the catalog of the Larkin Automotive Parts Company (Plaintiff's Exhibit O-1).

Except for the substitution of Hollingshead's Whiz name for the Larkin Company's Larkin-Thuro name, it is evident that the compressor and coupler sold by Hollingshead are identical with the compressor and coupler manufactured by Larkin.

The Larkin Company was enjoined against the further manufacture and sale of this compressor and coupler as a contributory infringement of the Gullborg patent. This writ of certiorari presents the question whether Hollingshead can sell this same device without such infringement.

THE R. M. HOLLINGSHEAD CO




(a) Handle on Booster should be kept down when Lubricator is not in use.

(b) Air Valve for pumping up Lubricator. When refilling Lubricator remove cap and release air pressure the same as you would in an automobile tire, before removing plug "I".

(c) Air Gauge should show pressure ranging from 80 to 100 lbs. when in use.

(d) Metallic Expansion Gasket for sealing tank.

(e) Grease Booster for forcing lubricant into bearings.

(f) Valve controlling grease supply to Booster.

(g) Ball Jointed Hose and Connection for use on Alemite System.

(h) Attachment for cars equipped with Dot System. Attach Dot Adapter to coupler on end of ball jointed hose, and screw adapter to fitting on car.

(i) Release air by opening valve "B" before removing this plug for refilling.

(j) Attachment for Zerk fitting. This is used by unscrewing ball jointed hose from Booster and replacing with this adapter.

CAMDEN, N.J. U.S.A.

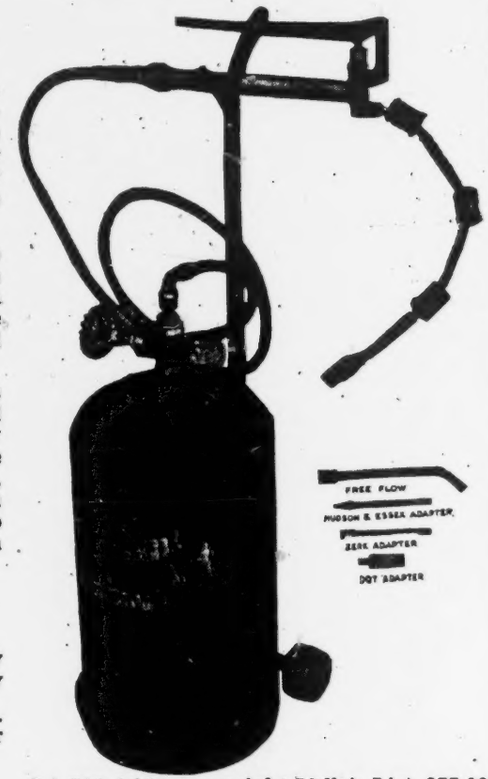
Picture of defendant's grease-dispensing equipment comprising defendant's Exhibit 8.

January 1, 1927. Printed in U. S. A.

THE LARKIN AUTOMOTIVE PARTS CO. DAYTON, OHIO, U.S.A.

# LARKIN-THURO
# Air Pressure Lubricator
## Semi-Automatic -- One Man Operation
***Complete Lubrication For All Makes of Cars or Trucks***

**Dot— Alemite— Zerk— Hudson— Essex— Differential—Transmission**




The Thuro Air Pressure Lubricator is designed for the Lubricant specialist who prefers oil for chassis lubrication. The advance features of the Thuro Air Pressure lubricator is the increased size container, portable, air operation, makes it a time saving device, one man operated and positive in operation.

The Superior Construction of the Thuro Air Pressure Lubricator is so different from other similar devices that it is unequaled in material, appearance and durability. The Tank is constructed from boiler Plate, all seams and joints are lap welded.

The Thuro Air Pressure Lubricator is 10 inches in diameter, tested to withstand many times the required pressure necessary for perfect operation. Tank bottoms are raised one inch from the end of the tank, leaving only tank shell in actual contact with floor or ground. Lubricator mounted on two wheels, equipped with all steel handle which extends 36 inches from the floor.

## Specifications

Tank—LA-500—10"x18" 5 gal. oil capacity
Tank—LA-600—10"x24" 7 gal. oil capacity

Maximum working pressure 105 to 120 lbs. Tank filler opening 3"—pipe size—color bright green, and dull nickel.

## EQUIPMENT

**LA-500 (shipping weight 50 lb.) List $75.00**
**LA-600 (shipping weight 55 lb.) List $80.00**

Standard Schraeder air filler valve, special design pressure gauge—tank outlet valve, six feet heavy duty metal flexible Hose—Thuro High Pressure Booster—maximum pressure 7500 lbs. to the square inch, three joint all steel flexible ball jointed hose—give a maximum hose length approximately 10 feet complete. Adapters furnished for lubricating cars equipped with Dot, Alemite and Zerk fittings—Free flow nozzle for filling Differentials and Transmissions also special nozzle for lubricating Hudson and Essex cars.

**THE LARKIN AUTOMOTIVE PARTS CO., DAYTON, OHIO, U. S. A.**

LARKIN-THURO LUBRICATION KEEPS THE UPKEEP DOWN

## The Gullborg Patent No. 1,307,734 in Suit.

We have reproduced and insert on the following pages a complete copy of the Gullborg patent in suit. (Rec., p. 411.) The drawings of this patent have become so blurred in the processes of repeated reproduction that some of the details are obscured. Accordingly, therefore, we have reproduced on a larger and clearer scale the principal figures of the drawings of this patent.

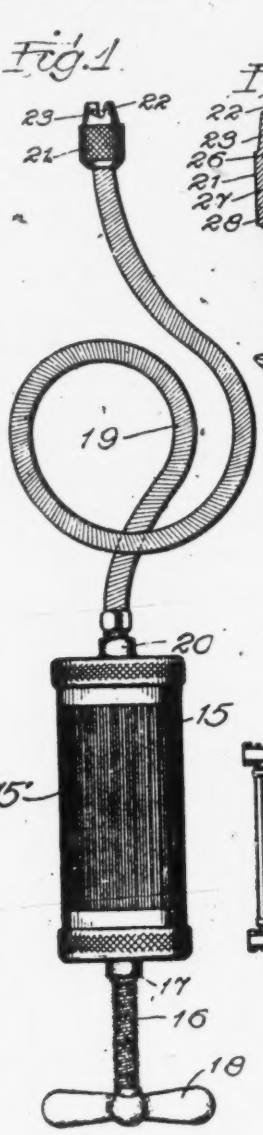
A. V. GULLBORG.

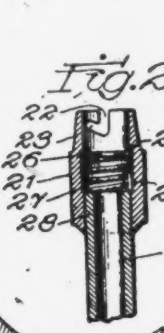
LUBRICATING MEANS.

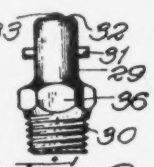
APPLICATION FILED DEC. 21, 1918.

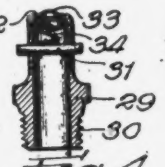
1,307,734.

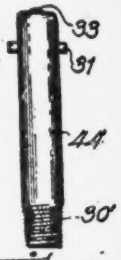
Patented June 24, 1919.

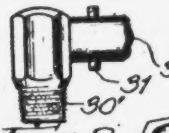


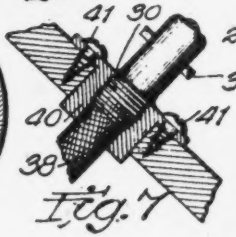



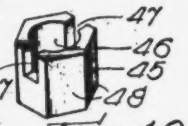



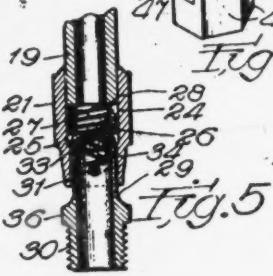



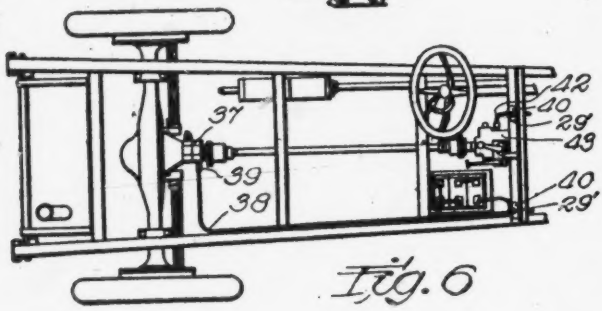




Witnesses:
Andrew Winterscorn
Earl A. Price

Inventor
Arthur V. Gullborg
By Williams, Bradbury & Lee
Attys

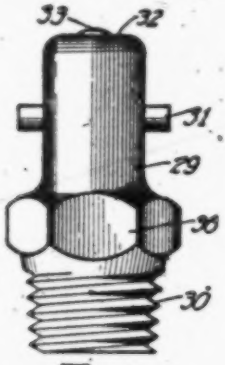



Fig. 3

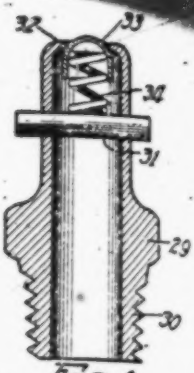



Fig. 4

Fig. 1

Fig. 2.

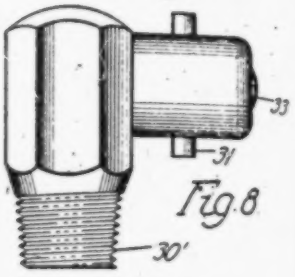



Fig. 8

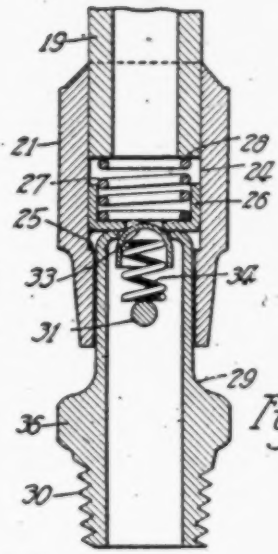



Fig. 5.

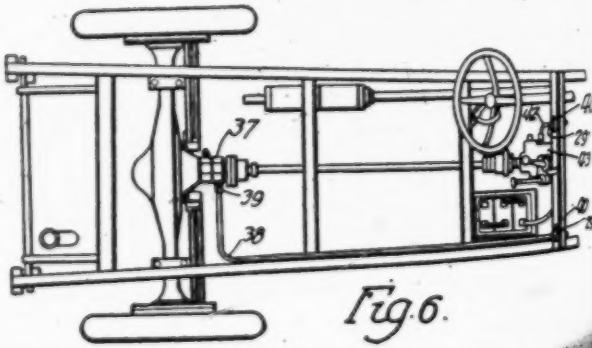



Fig. 6.

# UNITED STATES PATENT OFFICE.

ARTHUR V. GULLBORG, OF CHICAGO, ILLINOIS.

## LUBRICATING MEANS.

1,307,734. Specification of Letters Patent. Patented June 24, 1919.

Application filed December 21, 1918. Serial No. 267,868.

*To all whom it may concern:*

Be it known that I, ARTHUR V. GULLBORG, a citizen of the United States, residing at Chicago, in the county of Cook and State of Illinois, have invented a certain new and useful Improvement in Lubricating Means, of which the following is a full, clear, concise, and exact description, reference being had to the accompanying drawing, forming a part of this specification.

My invention relates to lubricating means, and is especially concerned with means for supplying suitable lubricants to parts of machines or apparatus requiring lubrication where these parts are difficult to gain access to, and is further concerned with the provision of apparatus for supplying lubricants under pressure to movable parts, the said means comprising a grease pump or gun provided with means for detachably connecting it with the various parts to be lubricated.

The objects of my invention are:

1st. To provide novel means for supplying a lubricant under pressure to the parts of an apparatus to be lubricated, the said means comprising a grease pump or gun and means for detachably connecting the discharge of said grease pump or gun with the part to be lubricated.

2nd. To provide novel coupling means for connecting the grease gun with the parts to be lubricated, the said coupling means being so constructed that when the coupling members are uncoupled or disconnected from each other there will be no excess lubricant on the outer ends of the coupling members.

3d. To provide novel means for effectively sealing the joint between the coupling members so that the lubricant may be forced between the parts to be lubricated under a very heavy pressure.

4th. To provide novel means whereby lubricant may be supplied to parts to which it is difficult to gain access.

5th. To provide novel coupling members to be permanently secured to the parts to be lubricated.

6th. To provide novel means to assist in attaching and detaching a tubular coupling member to a part to be lubricated.

Further objects will appear as the description progresses, reference being had to the accompanying drawing in which,

Figure 1 is a side elevation showing my improved grease gun;

Fig. 2 is a longitudinal section through the coupling member thereof;

Fig. 3 is a side elevation of one type of coupling member adapted to be secured to the part to be provided with lubricant and co-acting with the coupling member of my grease gun for connecting the discharge outlet of the grease gun with the part to be lubricated;

Fig. 4 is a longitudinal section of the structure shown in Fig. 3;

Fig. 5 is a longitudinal section through the coupling members shown in Figs. 2 and 4, but taken on a plane at right angles to the section plane of Figs. 2 and 4 showing the two coupling members united;

Fig. 6 is a more or less conventional plan view of an automobile with the body thereof removed showing the novel means which I provide for conveying lubricant to parts ordinarily difficult to gain access to, the front portion of the automobile chassis being broken away;

Fig. 7 is a sectional view showing the means for securing my coupling members to the ends of the conduits for conveying lubricant to the parts difficult of access;

Fig. 8 is a side elevation of a modified form of coupling member;

Fig. 9 is a side elevation of a still further modification of my coupling member; and

Fig. 10 is a perspective view of the means which I employ for rotating the coupling members shown in Fig. 9 in either direction to attach it to or detach it from the part to be provided with a lubricant.

Similar characters of reference refer to similar parts throughout the several views.

Referring to the drawings, the reference character 15 indicates the barrel of my improved grease gun or pump which is provided in a wellknown manner with a plunger, not shown, which is reciprocated in the barrel 15 by means of a screwthreaded piston rod 16 which co-acts with a screwthreaded nut 17, the piston 16 being provided with a handle 18. The barrel 15 is provided with ribs or corrugations 15′ to insure a firm grip of the hand thereon. A flexible conduit 19, of any suitable and wellknown construction, has one end secured to the discharge outlet 20 of my pump and the other end is provided with a hollow coupling member, indicated in general by the reference character 21. The free end of this coupling member, as shown in Fig. 2, is provided with a

bayonet slot 22, the transverse portion 23 of which is inclined from the inner end of the longitudinal portion of the slot toward the outer end of the coupling member for a purpose which will be referred to later on. The bore of the coupling member is enlarged at 24 to provide an annular shoulder 25. A perforated cup leather or sealing disk 26 is slidably mounted in the annular portion 24 of the bore of the coupling and is urged against the shoulder 25 by means of a coiled spring 27, one end of which abuts against the cup leather or sealing disk 26 and the other end of which abuts against the adjacent end 28 of the conduit 19. This end of the conduit may be soldered or secured in any convenient manner to the coupling member.

Referring to Figs. 3 and 4, the reference character 29 indicates as a whole a second coupling member which co-acts with the coupling member just described. This coupling member is in general tubular in form and is provided at one end with screwthreads 30 for securing it to the part to be lubricated. A pin 31 extends through and projects from the opposite sides of the other end of the tubular member. This end of the tubular member is flanged inwardly, as indicated at 32, to form a valve seat with which the hollow capsule shaped valve 33 co-acts. A spring 34 interposed between the pin 31 and the hollow valve 33 urges the latter against the valve seat 32. My purpose in making the valve 33 hollow is, first, to provide sufficient room for the spring 34 without materially increasing the length of the coupling member, and, second, to provide means which will tend to prevent the spring 34 from buckling or flexing longitudinally when the valve 33 is pushed inwardly to admit the lubricant. My invention contemplates the provision of facets 36 to receive the jaws of a wrench whereby the coupling member may be attached to or detached from the parts to be lubricated.

In Fig. 5 I have shown the coupling members 21 and 29 coupled together. In this position it will be noted that the spring 27 is partially compressed and that the sealing disk 26 is displaced from the annular shoulder 25 by the end of the coupling member 29. When the piston of the gun pump is actuated to force lubricant through the conduit 19 under pressure this pressure will cause the sealing disk 26 to seal the joint between the two coupling members and thus prevent any escape of lubricant over the sides of the coupling member 29. On account of the fact that the transverse portion 23 of the bayonet slot in the coupling member 21 is inclined toward the open end of this coupling member it is necessary in order to detach this coupling member from the coupling member 29 to move it toward the coupling member 29. This movement causes an additional small quantity of lubricant to be forced into the coupling member 29. When the coupling member 21 is then turned to permit the pin 31 to slide in the longitudinal portion of the slot 22 the sealing disk 26 is moved toward the end of the coupling member 29 under the pressure of the spring 34. This causes the sealing disk 26 to move toward the outer end of the coupling member 21 and thereby produces a slight vacuum which causes any grease which might otherwise remain on the outer end of the coupling member 29 or the outer side of the valve 33 to be sucked back behind the sealing disk 26, and thereby prevents any excess of lubricant from remaining on the end of the coupling member 29 or on the outside of the valve.

From the above description it will be seen that I have provided means for conveying a lubricant to the part or parts to be lubricated which not only prevents the loss of lubricant, even though the lubricant may be forced between the bearing surfaces under very high pressure, but also prevents the lubricant from remaining upon exposed portions of the coupling members after these have been uncoupled, and subsequently lost. This feature is of importance where, as I will describe later on, the coupling members are located at readily accessible points and where, in case the parts being lubricated form a part of a motor vehicle or other similar structure, the clothes of the operator are likely to come in contact with these coupling members.

Referring to Fig. 6 in which I have disclosed a portion of a motor vehicle with the body thereof removed, the reference character 37 indicates a bearing in the differential casing which is supplied with lubricant by a conduit 38 connected therewith by a suitable hollow coupling 39. The other end of the conduit 38 is brought forwardly in the vehicle and is secured to either the dash or the instrument board, as may be found convenient, by means of a floor socket 40, shown in detail in Fig. 7, which is secured in place by means of the screws 41 and is provided with an internal screwthread for receiving the screwthreaded portion 30 of a coupling member 29'. This coupling member 29' is similar to that shown in Figs. 3 and 4, except that it is not provided with the facets 36 for receiving the jaws of a wrench. The forward end of the conduit 38 may be soldered or otherwise secured in the socket 40. The reference character 42 indicates another conduit for conducting oil from the coupling member 29' to the transmission housing 43.

While I have illustrated means for conducting lubricant to but two portions of this automobile vehicle it is to be

stood that conduits similar to 38 and 42 may be used for conducting lubricant to any portion of the vehicle which it is desired to lubricate. Furthermore, this feature of my invention is not to be limited to means for lubricating motor vehicles, but is capable of being used for lubricating any apparatus whether the parts to be lubricated are or are not difficult of access.

In Fig. 8 I have shown a modified form of a coupling member to be secured to a part to be lubricated. This coupling member is L shaped and one end thereof is provided with screwthreads 30' and the other end thereof being provided with a pin 31 and a spring-pressed valve or closure 33 similar to that described in connection with Figs. 3 and 4. The purpose of this coupling member is to provide means for connecting the coupling member 21 with a part to be lubricated which would otherwise be difficult of access if provided with a straight coupling member such as that shown in Figs. 3 and 4.

In Fig. 9 I have disclosed a still further modification of my coupling member wherein it is formed from a tubular member 44 of substantially constant diameter which is not provided with means for co-acting with a wrench to attach or detach it to the part to be lubricated. In order to thus attach or detach this member I provide the means illustrated in Fig. 10. This means comprises a sleeve-like member 45 having a bore 46 therein for receiving the tubular member 44 and slots 47 for receiving the ends of the pin 31 of the tubular member 44. The member 45 is provided with facets 48 for co-acting with a wrench or other tool for rotating this sleeve.

While I have described the preferred embodiments of my invention it is to be understood that it is capable of other adaptations and modifications within the scope of the appended claims.

Having thus described my invention what I claim as new and desire to secure by Letters Patent of the United States is:

1. The combination with a hollow coupling member having a pin projecting from one side thereof and a spring-pressed closure, of a pump having a flexible conduit connected with the outlet thereof, a second hollow coupling member secured to the other end of said conduit for receiving the closed end of said first named coupling member and provided with a bayonet slot for receiving said pin, the transverse portion of said slot being inclined from the longitudinal portion thereof toward the outer end of the coupling member, the bore of said coupling member being enlarged to provide a shoulder, a perforated sealing disk slidably mounted in the enlarged portion of said bore, and a spring confined between the ends of said conduit and said disk for urging said disk against said first named coupling member.

2. The combination with a hollow coupling member having a pin projecting from one side thereof and a spring-pressed closure, of a pump, a discharge conduit having one end secured to the outlet of said pump, a second hollow coupling member for receiving the closed end of said first named coupling member secured to the other end of said conduit and provided with a bayonet slot adapted to co-act with said pin, a perforated sealing disk mounted to reciprocate in the bore of said coupling member, means for yieldingly urging said sealing disk against the closed end of said first named coupling member, and means for limiting the movement of said sealing disk in the direction of said second coupling member.

3. The combination with a hollow coupling member having a spring-pressed closure, of a pump, a discharge conduit having one end secured to the outlet of said pump, a second hollow coupling member for receiving the closed end of said first named coupling member secured to the other end of said conduit, a perforated sealing disk mounted to reciprocate in the bore of said coupling member, means for yieldingly urging said sealing disk against the closed end of said first named coupling member, and means for limiting the movement of said sealing disk toward said second coupling member.

4. The combination with a hollow coupling member having a spring-pressed closure, of a pump, a discharge conduit having one end secured to the outlet of said pump, a second hollow coupling member for receiving the closed end of said first named coupling member secured to the other end of said conduit, a perforated sealing disk mounted to reciprocate in the bore of said coupling member, and means for yieldingly urging said sealing disk against the closed end of said first named coupling member.

5. The combination with a pump having a flexible conduit connected with the outlet thereof, of a hollow coupling member secured to the other end of said conduit and provided with a bayonet slot, the transverse portion of said slot being inclined from the longitudinal portion thereof toward the outer end of the coupling member, the bore of said coupling member being enlarged to provide a shoulder, a perforated sealing disk slidably mounted in the enlarged portion of said bore, and a spring confined between the ends of said conduit and said disk for urging said disk toward said shoulder.

6. The combination with a pump having a discharge outlet, of a coupling member connected with said discharge outlet and provided with a bayonet slot, the transverse

portion of said slot being inclined from the inner end of the longitudinal portion thereof toward the outer end of said coupling member, a perforated sealing disk slidably mounted in the bore of said coupling member, and means for yieldingly urging said sealing disk toward the outer end of said coupling member, and means for limiting the movement of said sealing disk toward the outer end.

7. The combination with means for supplying lubricant under pressure; said means comprising a discharge outlet, of a coupling member connected with said discharge outlet, a perforated cup leather slidably mounted in said coupling member, and means for yieldingly urging said cup leather toward the outer end of said coupling member.

8. The combination with an apparatus having a part to be lubricated, of a conduit for conducting lubricant to said part, a coupling member secured to the end of said conduit and provided with a spring-pressed valve closure, means for supplying lubricant to said conduit comprising a receptacle provided with a discharge outlet, a second coupling member connected with said discharge outlet, means for detachably uniting said coupling members, and means for sealing the joint between said coupling member and for removing excess lubricant from the adjacent ends thereof when said coupling members are uncoupled.

9. The combination with an apparatus having a part to be lubricated, of a conduit for conducting lubricant to said part, a coupling member secured to the end of said conduit and provided with means for supplying lubricant to said conduit comprising a receptacle provided with a discharge outlet, a second coupling member connected with said discharge outlet, means for detachably uniting said coupling members, and a pliable gasket for sealing the joint between said coupling members.

10. The combination with an apparatus having a part to be lubricated, of a conduit for conducting lubricant to said part, a coupling member secured to the end of said conduit and provided with means for supplying lubricant to said conduit comprising a receptacle provided with a discharge outlet, a second coupling member connected with said discharge outlet, and means for detachably uniting said coupling members and for removing excess lubricant from the adjacent ends thereof when said coupling members are uncoupled.

11. The combination with a bearing provided with a member for receiving lubricant, of means for supplying lubricant thereto comprising a hollow member, means for supplying lubricant to said hollow member under pressure, means for detachably connecting said members, and means for sealing said connection comprising a gasket positioned between said members and held against one of said members by the pressure of the lubricant.

12. The combination with a bearing provided with a member for receiving lubricant, of means for supplying lubricant thereto comprising a hollow member, means for supplying lubricant to said hollow member under pressure, means for detachably connecting said members, means for sealing said connection comprising a gasket positioned between said members and held against one of said members by the pressure of the lubricant, and a spring for initially positioning said gasket against said member.

13. The combination with a receptacle for receiving lubricant, of means for supplying lubricant to said receptacle comprising a hollow member, means for forcing lubricant into said hollow member under pressure, and means for connecting said hollow member to said receptacle in fluid-tight relation comprising a pliable member positioned in said hollow member and having one face for contacting with said receptacle, the other face of said pliable member being subjected to the pressure of the lubricant in said hollow member.

14. The combination with a grease cup comprising a tubular member having one end flanged inwardly to provide a closure seat, a closure, a pin extending through said tubular member and from both sides thereof, and a spring confined between said pin and closure, and tending to hold said closure on its seat, of a grease pump having a discharge conduit, and means co-acting with the ends of said pin for detachably connecting the discharge end of said conduit with said grease pump.

15. The combination with a grease cup comprising a tubular member having a closure seat, a closure, a pin extending through said tubular member and from both sides thereof, and a spring confined between said pin and closure, and tending to hold said closure on its seat, of a grease pump having a discharge conduit, and means co-acting with the ends of said pin for detachably connecting the discharge end of said conduit with said grease cup.

16. The combination with a grease gun having a discharge conduit, of means for connecting said conduit with a bearing comprising a tubular member, co-acting means on said conduit and said tubular member for detachably connecting said conduit and tubular members, and a flexible member for sealing the joint between said conduit and said tubular member, said flexible member having an aperture for the passage of lu-

bricant from said conduit to said tubular member, a portion of one face of said flexible member being positioned so as to be subjected to any pressure created in said conduit to force it against said tubular member.

17. The combination with means for supplying lubricant under pressure comprising a discharge member, of means for connecting said discharge member to a bearing comprising a tubular member, and means for detachably connecting said members in sealed relation comprising means subjected to the pressure created in said members, the said means being positioned between said members and held against one of said members by said pressure.

18. The combination with a member for receiving lubricant, of means for supplying lubricant thereto under pressure comprising a tubular member, means for detachably connecting said tubular member to said lubricant-receiving member in sealed relation comprising a flexible member provided with an aperture for the passage of lubricant, one face of said member being subjected to the pressure of the lubricant.

In witness whereof, I hereunto subscribe my name this 14th day of December, 1918.

ARTHUR V. GULLBORG.

Witnesses:

JOHN E. CARLSON,

JOHN L. STEFFEN.

## DISCLAIMER.

1,307,734.—*Arthur V. Gullborg*, Chicago, Ill. LUBRICATING MEANS. Patent dated June 24, 1919. Disclaimer filed August 29, 1927, by the assignee by mesne assignments, *The Bassick Manufacturing Company.*

Hereby enters this disclaimer to that part of the claims in said specification which is in the following words, to wit:

"12. The combination with a bearing provided with a member for receiving lubricant, of means for supplying lubricant thereto comprising a hollow member, means for supplying lubricant to said hollow member under pressure, means for detachably connecting said members, means for sealing said connection comprising a gasket positioned between said members and held against one of said members by the pressure of the lubricant, and a spring for initially positioning said gasket against said member."

[*Official Gazette September 13, 1927.*]

## The Construction and Mode of Operation of the Coupler of the Gullborg Patent No. 1,307,734.

In the accompanying Figure 1 we have illustrated the compressor and coupler exactly as they are disclosed in the Gullborg patent (Rec., p. 411). At the left-hand side of this drawing the coupler is shown in attachment with one of the fittings of the patent. "A perforated cup leather or sealing disc 26 is slidably mounted in the annular portion 24 of the bore of the coupling, and is urged against the shoulder 25 by means of a coiled spring 27, one end of which abuts against the cup leather or sealing disc 26, and the other end of which abuts against the adjacent end 28 of the conduit 19." (Rec., p. 413, line 7.) When the coupler is attached to the fitting, the end of the fitting pushes the cup leather sealing disc 26 away from the shoulder 25, and into the annular portion 24 of the bore of the coupler.

The operator then moves forwardly the plunger or piston in the barrel of the grease gun or pump by means of the screw-threaded piston rod associated with the handle. This advancement of the plunger forces grease from the barrel of the grease gun through the flexible conduit leading to the coupler, and thence through the perforated sealing disc 26 of the coupler and past the ball check valve in the head of the pin fitting, and thence through the passageway in the center of the shackle bolt to the bearing surface to be lubricated. The grease under pressure as it enters the coupler and passes on through the coupler to the bearing surface is indicated in red.

When the injection of grease under high pressure into a given bearing has been completed, the plunger of the compressor is backed off to relieve the pressure

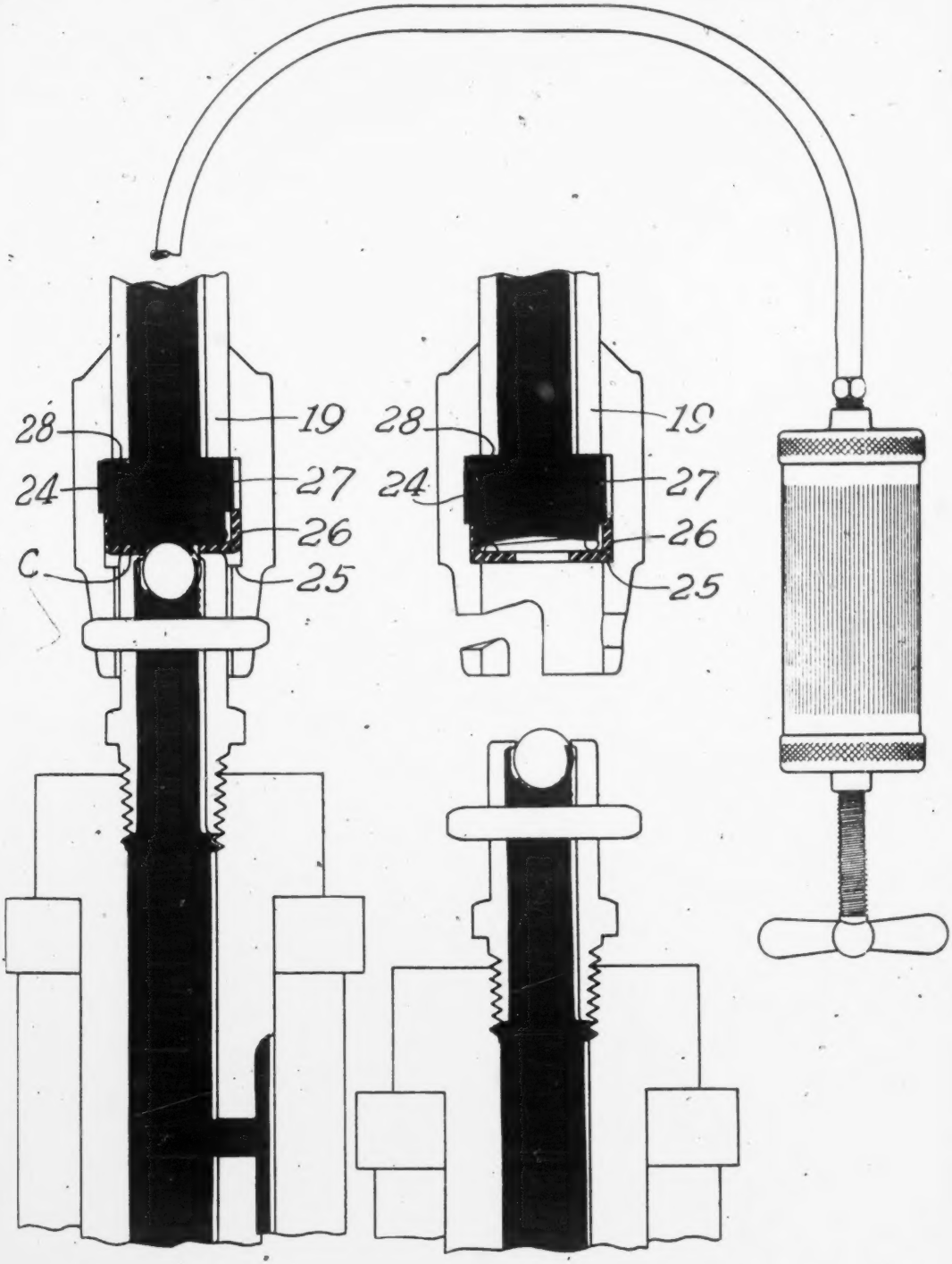



FIG. 1.

upon the grease, whereupon the coupler is detached from the pin fitting.

When the coupler is detached from the pin fitting by disengaging the bayonet slots of the coupler, as shown in the central view in Fig. 1, the perforated cup leather or sealing disc 26 is pushed downwardly by the spring 27, until the periphery of the sealing disc 26 engages the shoulder 25 at the end of the cylindrical bore 24 of the coupler.

When the sealing disc 26 is thus pushed downwardly by the spring 27, the space between the sealing disc 26 and the conduit 19 is enlarged slightly. The grease, like other liquids, is substantially non-compressible and non-expansible. The grease cannot and does not, therefore, expand (as would an elastic medium, like air) to fill this enlarged space.

The result is a tendency to produce a vacuum (*i. e.*, an unfilled space) within the bore of the coupler above the sealing disc 26, as indicated by the absence of the (red colored) grease just above the sealing disc 26 in the central view of Fig. 1. This vacuum creates a suction, *i. e.*, a tendency of the air to rush in to fill the empty space. This air rushing in through the crevice at C between the end of the fitting and the outer face of the sealing disc 26 carries with it the blob of grease which would otherwise be left on the end of the fitting and on the ball valve at the end of the fitting, and carries this excessive grease back through the hole or perforation in the sealing disc 26 and into the space in the bore of the coupler above the sealing disc 26.

## The Hollingshead Company's Equipment.

The respondent Hollingshead Company sold two kinds of couplers (with their associated compressors). The coupler sold to Cumming was not of the "suction" type. This coupler bought by Cumming was found by the District Court (Rec., pp. 36, 522) to have been sold in contributory infringement of claims 14 and 15 only of Gullborg patent 1,307,734. The Sixth Circuit Court of Appeals held that claims 14 and 15 must be limited to the "suction effect" type of coupler, and that the compressor and coupler sold to Cumming did not, therefore, infringe these claims. (Opinion, Rec. p. 601.)

The other type of coupler,—sold by Hollingshead to Beezley, had a "suction effect" coupler. The further sale of this suction effect coupler was enjoined by the District Court, not only under claims 14 and 15, but also under claims 1, 2, 3, 4, 5, 6, 8 and 10 of this Gullborg patent 1,307,734.

On behalf of the petitioner we have always asserted claims 1, 2, 3, 4, 5, 6, 8 and 10 to be limited to couplers of the "suction effect" type. We adhere to that view. The Hollingshead Company has always entertained and expressed the same view. The opinion of the Sixth Circuit Court of Appeals entered November 14, 1934, is based upon and expresses the same view. Everybody concerned has, therefore, entertained the same understanding of these claims, and still entertains the same understanding.* Our petition for a writ of certiorari

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* In respondent's brief in opposition to our petition for writ of certiorari, counsel for the respondent say on page 2, relative to the foregoing statement:

"Except as hereinafter qualified, we accept the following statement in Petitioner's brief (p. 18):

"'On behalf of the petitioner we have always asserted claims 1, 2, 3, 4, 5, 6, 8 and 10 to be limited to couplers of the "suction effect" type. We adhere to that view. The Hollingshead Company has always entertained and expressed the same view. The opinion

has to do solely, therefore, with the question of infringement of claims 1, 2, 3, 4, 5, 6, 8 and 10, (although claims 14 and 15 are, in any event, broad enough to cover the "suction effect" coupler).

The point of our petition is, briefly, that the compressor which Hollingshead sold to Beezley was of the "suction effect" type.

The coupler of this compressor which Hollingshead sold to Beezley is, in construction, mode of operation and result, substantially identical with the "suction effect" coupler illustrated and described in the Gullborg patent in suit. It is identical in construction, mode of operation and result with the couplers of the compressors held by the Seventh Circuit Court of Appeals to infringe the "suction effect" claims of the Gullborg patent. We have already explained just what the "suction effect" is and how it is developed in and by the coupler of the Gullborg patent in suit. We wish now to call your Honor's attention to the construction and mode of operation of the coupler of the compressor sold by Hollingshead to Beezley, and then to compare this coupler with that held by the Seventh Circuit Court of Appeals to be sold in infringement of the Gullborg patent.

We shall wish to compare it also with the couplers previously held by the Sixth Circuit Court of Appeals to infringe.

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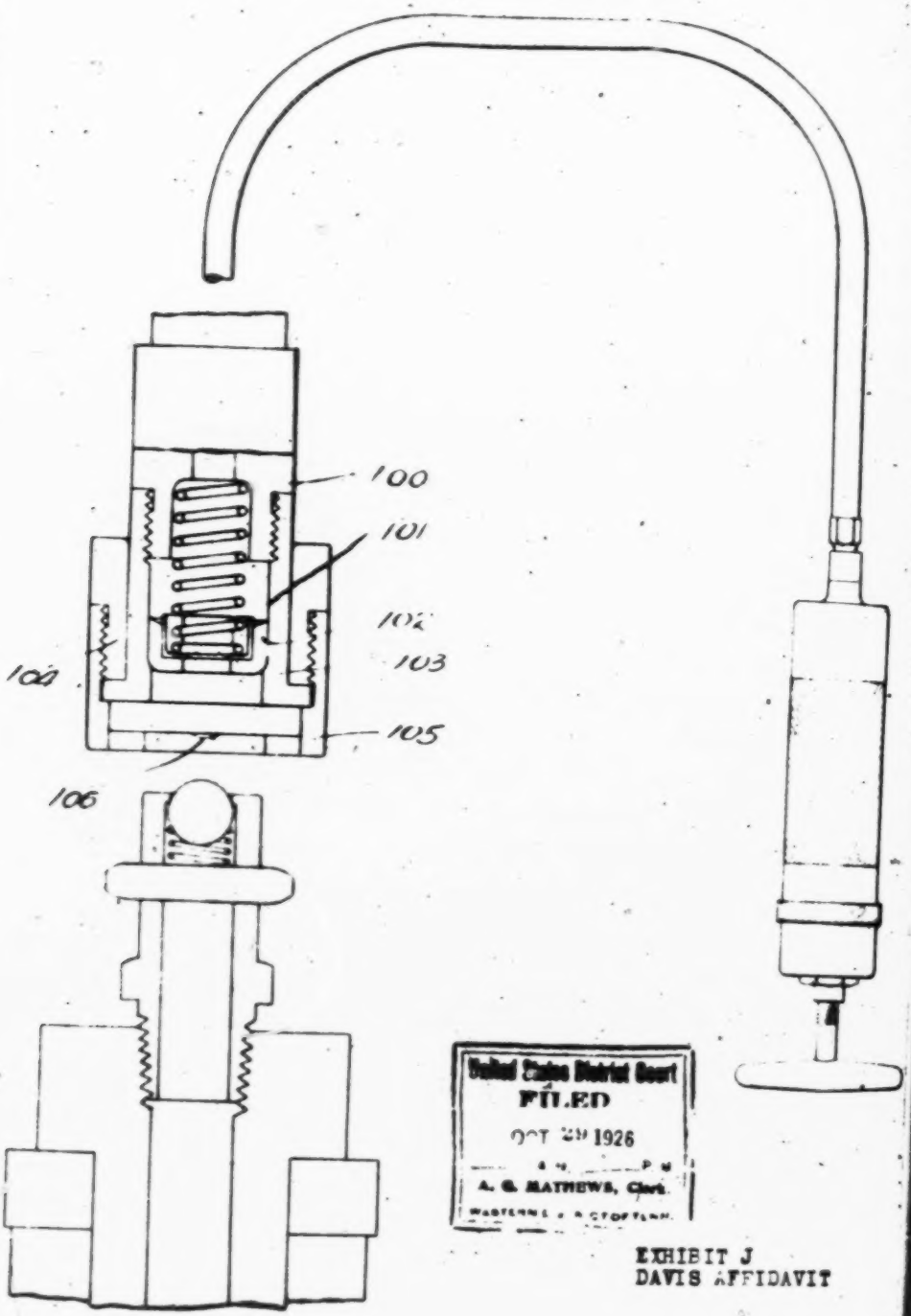
of the Sixth Circuit Court of Appeals entered November 14, 1934, is based upon and expresses the same view. Everybody concerned has, therefore, entertained the same understanding of these claims, and still entertains the same understanding.'

"It will be noted that petitioner accepts the finding of the Circuit Court of Appeals that the **grease-gun** sold to Cumming, embodying (as is admitted by plaintiff), a **'non-suction-effect'** coupler, does **not** infringe **any** of the claims;—even claims 14 and 15 which plaintiff-petitioner contended are not limited to this 'suctional' feature, but which the Circuit Court of Appeals held must be so limited in order to be valid."

At a later point we shall have something to say relative to this one "qualification" which counsel for the respondent have interposed.

This qualification does not modify our statement that everybody concerned regards claims 1, 2, 3, 4, 5, 6, 8 and 10 of the Gullborg patent as describing and limited to the "suction-effect" coupler.

PLAINTIFF'S EXHIBIT 15




United States District Court
FILED
OCT 29 1926
A. G. MATHEWS, Clerk

EXHIBIT J
DAVIS AFFIDAVIT

**The Compressor Sold by the Hollingshead Company to Beezley Included a Suction Effect Coupler Substantially Identical With Those Held by the Seventh Circuit Court of Appeals, and Previously Held by the Sixth Circuit Court of Appeals, to Infringe the Suction Effect Claims of Gullborg Patent No. 1,307,734.**

Opposite this page we have reproduced Exhibit J drawing of the Davis affidavit, appearing at page 373 of record herein.* It illustrates the construction of the coupler forming a part of the compressor which the Hollingshead Company, respondent, sold to Beezley.

On the fly-page opposite this drawing of the Hollingshead equipment sold to Beezley, we have reproduced the same drawing, as Figure 2, but have shown the coupler both attached to a pin fitting and detached therefrom, as in the other drawings of this series. We have supplied reference numerals corresponding with those of the Gullborg patent drawing. Furthermore, we have shown in the left-hand view the condition of the grease during the period of injection. In the cen-

*In all of these drawings the coupler part is shown in an enlarged scale. The grease gun or pump part of the combination is shown in relatively small scale. All of the claims of the Gullborg patent describe the compressor or "pump" part of the combination in broad inclusive language. This "pump" or compressor element of the claims may therefore take any one of many equivalent forms. None of the compressors of any of the parties in any of the suits to which reference is made conformed in all of their minute details to these diagrammatic representations of the compressor part of the combination.

The brief filed on behalf of the respondent in opposition to our petition for writ of certiorari criticized our presentation of the defendant's "Beezley type" grease gun or pump as made in our petition for writ of certiorari, upon the ground that our diagrammatic illustration of the compressor part of the combination did not correspond with the details of the compressor as actually sold to Beezley by Hollingshead. We shall answer this criticism at a later point in our brief.

There was no criticism of the drawings and description of the Hollingshead Company's coupler as presented in our petition for writ of certiorari and as now repeated.

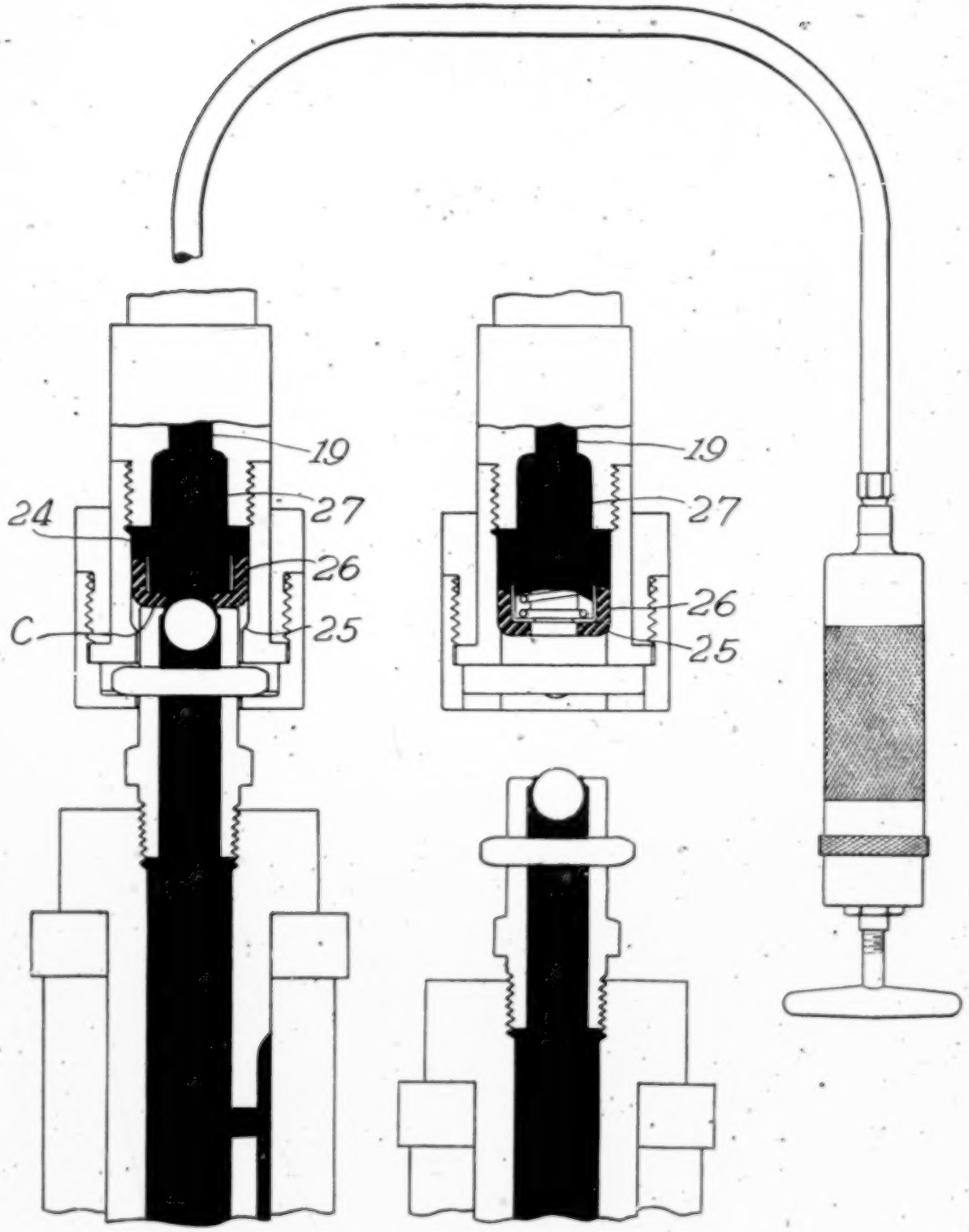



FIG. 2.

tral view we have illustrated in red the fact that the grease does not entirely fill the bore 24 of the coupler above the sealing disk 26.

**It Is Conceded by the Respondent That This Coupler Part of the Apparatus Which Hollingshead Sold to Beezley Is a "Suction-Effect" Coupler Substantially Equivalent or Identical With the "Suction-Effect" Coupler Shown in the Gullborg Patent.**

This concession is shown in part by the findings of fact proposed by defendant on November 19, 1932. The defendant was interested in having the findings distinguish between the non-suction effect coupler of the Hollingshead compressor sold to Cumming and the suction effect coupler of the compressor sold to Beezley. In order to emphasize this distinction, the defendant proposed the following findings of fact (Rec. p. 556):

> "1. That the defendant's coupler, exemplified in and forming a part of plaintiff's Exhibit A of the affidavit of D. A. Beezley of April 12, 1926, and also illustrated in the drawing constituting plaintiff's Exhibit 15, is a coupler of the 'suctional' type shown in the drawings of Gullborg patent No. 1,307,734 and described in the specification thereof and variously defined in claims 1, 2, 3, 4, 5, 6, 8 and 10 thereof.
>
> "2. That defendant's coupler, exemplified in and forming part of Exhibit A of the affidavit of O. A. Cumming of September 13, 1926 and illustrated in the drawing constituting plaintiff's Exhibit 16, does not embody the suction-producing construction shown in the drawings of the Gullborg Patent No. 1,307,734 and described in the specification of said patent and variously defined in claims 1, 2, 3, 4, 5, 6, 8 and 10 of said patent."

In his argument in support of this first proposed finding of fact, Mr. Kalish, on behalf of the defendant, said (Rec., p. 577):

> "The first finding of fact which we request is that this coupler which is identified as Exhibit A of the affidavit of D. A. Beezley, and also shown by the plaintiff in its drawing Exhibit 15, is of the suctional type shown in the drawings of the patent and described in the specifications and covered by these claims. Now that happens to be a fact that has been plaintiff's contention; it is the basis upon which that appliance was enjoined, and I can see no reason why that fact should not be stated."

This concession that the coupler of the compressor sold by Hollingshead to Beezley is of the suction effect type as shown in the Gullborg patent, was repeated in the respondent's brief in opposition to our petition for a writ of certiorari as follows:

> "It may be conceded,* as petitioner so elaborately argues in its brief, that the coupler part, *per se*, of the Beezley grease gun would have been capable, if combined with a pump of a different type, of having a so-called 'suction effect.'"

The asterisk in this quotation draws attention to a footnote by counsel for respondent, in which they say:

> "This is conceded merely for purposes of argument, but not admitted, because the evidence shows that no 'suction effect' can be produced with the type of pump used by defendant-respondent in its grease guns regardless of the construction of the coupler part."

We shall a little later address ourselves to the respondent's contention that the grease gun with which the Hollingshead Company associated its coupler was of a character which did not permit the suction effect coupler to utilize its suction effect.

For the moment we are saying merely that the coupler of the respondent's compressor as sold to Beezley was of the suction effect type illustrated in the drawings of Gullborg patent No. 1,307,734, and described in claims 1, 2, 3, 4, 5, 6, 8 and 10 of this patent. We shall at a later point in this brief take up the details of the grease gun part of the compressor sold to Beezley, and in connection therewith answer the respondent's argument that although they sell a grease gun equipped with a suction effect coupler, still the grease gun is of a kind which prevents the suction effect coupler from functioning as such.

Continuing for the time being, therefore, with a consideration of the coupler only, a comparison shows that the Hollingshead Company's suction effect coupler in this case is absolutely identical with the coupler manufactured and sold by the Larkin Automotive Parts Company as involved in a suit in the Seventh Circuit and as shown opposite the following page of this brief. This brings us to the decision of the Seventh Circuit Court of Appeals in *Larkin Automotive Parts Company and Montgomery-Ward & Co.* v. *Bassick* (C. C. A. 7), 19 Fed. (2d) 944.

**The Construction and Mode of Operation of the Couplers Previously Held By the Sixth Circuit Court of Appeals to Infringe the "Suction effect" Claims of the Gullborg Patent 1,307,734.**

*Bassick v. O. K. Manufacturing Co.*, Appeals Nos. 4571 and 4572, 6th C. C. A., 18 Fed. (2d) 29.

Opposite this page of this brief we have reproduced Plaintiff's Exhibit Chart 118, which appears at page 664 of the record of Appeals Nos. 4571 and 4572 in the Sixth Circuit Court of Appeals, in the case of *Bassick v. O. K. Manufacturing Company et al.*, involving Gullborg patent No. 1,307,734. This record in the O. K. case is before the court as a physical exhibit, Plaintiff's Exhibits 4-A and 4-B. The construction illustrated was one of those found to infringe by the Sixth Circuit Court of Appeals.

Adjacent this exhibit drawing is a drawing, Figure 4, of the same equipment, in which we have indicated the grease in red. The reference letters correspond with those of the Gullborg patent. We have added the reference letter C to indicate the crevice through which there is a rush of air upon the downward movement of the sealing disc 26 upon the detachment of the coupler from the pin fitting.

Here, as in the construction of the Gullborg patent, the inward rush of air through the hole or perforation in the center of the sealing disc 26 carries any excess lubricant from the head of the fitting back into the space above the sealing disc 26 within the bore 24 of the coupler.

The sale of this device by The O. K. Manufacturing Company was held by the Sixth Circuit Court of Appeals, in its opinion at 18 Fed. (2d) 29, to be an infringement of the suction effect claims of the Gullborg patent in suit.

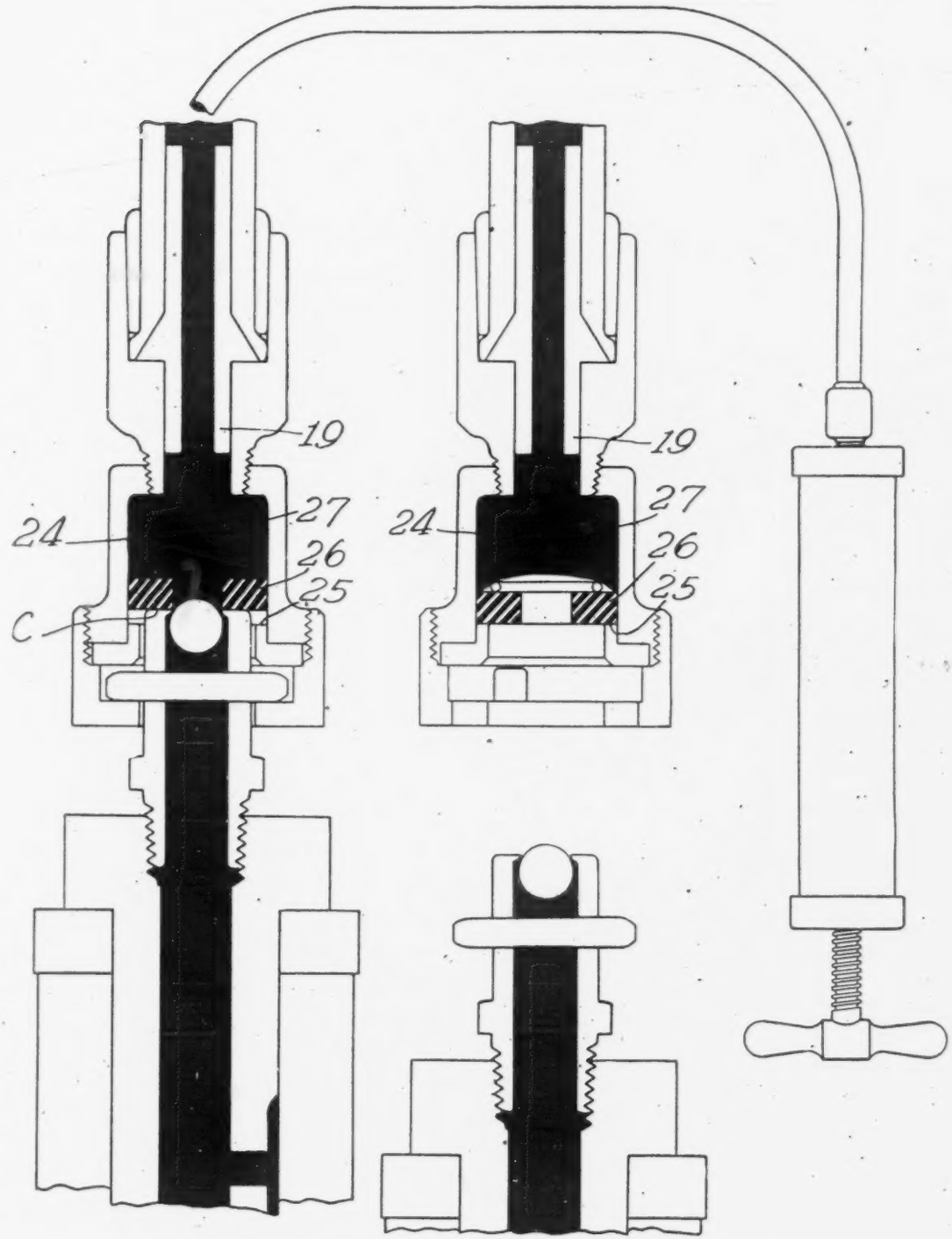



FIG. 4.

## The Larkin Company's Coupler Before the 6th C. C. A.

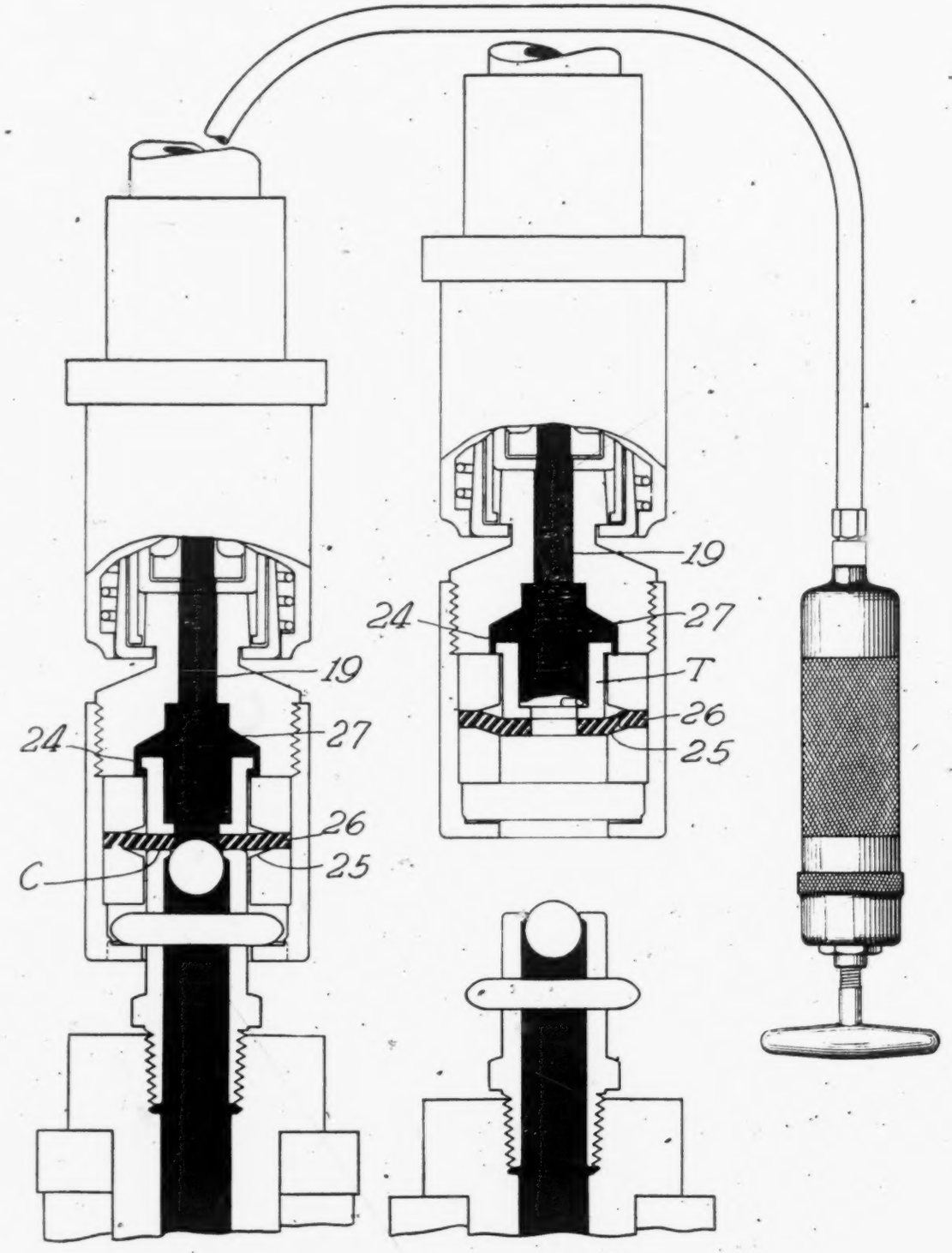
*Bassick* v. *The Larkin Automotive Parts Co.*, Appeals Nos. 4601 and 4766, 6th C. C. A., 18 Fed. (2d) 29.

Opposite this page of this brief we have reproduced Plaintiff's Exhibit Chart 34 in the case of *Bassick* v. *The Larkin Automotive Parts Company*, decided by the Sixth Circuit Court of Appeals. This drawing appears at page 214, Vol. IV of the record in the Larkin case, which was offered in evidence as Plaintiff's Exhibits 3-A, 3-B, 3-C, and 3-D, herein.

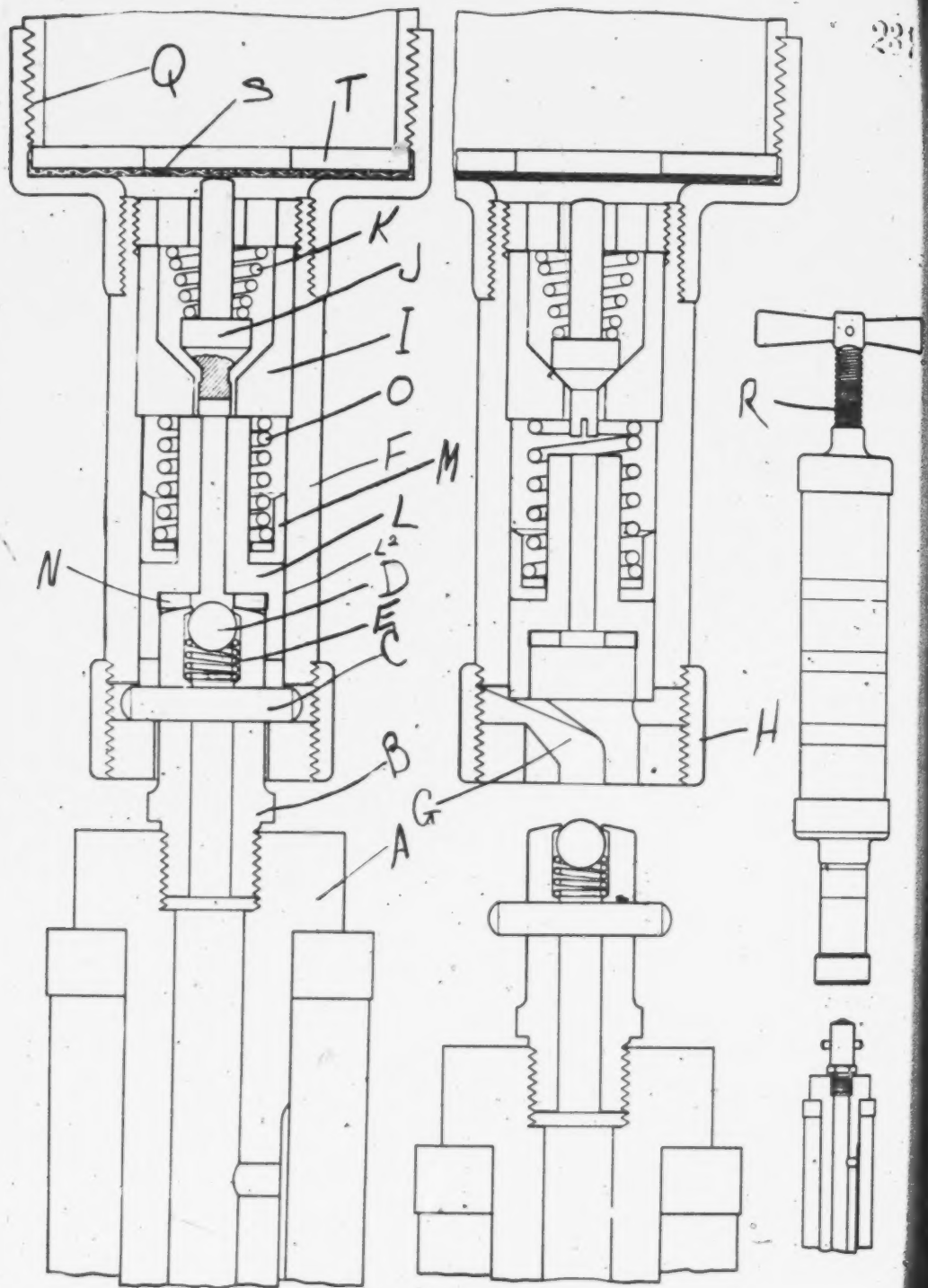
Adjacent this drawing of the Larkin equipment, which is one of those found to infringe by the Sixth Circuit Court of Appeals, we have reproduced the exhibit drawing as Figure 5,—adding to it reference letters corresponding with those of the Gullborg patent and indicating in red the position of the grease during the period of injection and upon detachment of the coupler from the fitting.

In this case the sealing disc did not exactly *slide* within the bore of the coupler. The same results were secured by an equivalent construction, in which the leather sealing disc 26 was given a somewhat enlarged diameter. The outer periphery of this large sealing disc was clamped between metal shoulders. These metal shoulders were flared out toward the axis of the coupler in such a way as to permit the sealing disc to flex easily upon the attachment and detachment of the coupler. A metal thimble T was interposed between the spring 27 and the sealing disc 26 to transmit the pressure of the spring 27 to the sealing disc 26.

As shown in the left-hand view of Figure 5, the sealing disc was flexed upwardly so as to compress the spring 27 upon the attachment of the coupler to the



pin fitting. Upon the detachment of the coupler from the pin fitting, the spring 27 pushed the central portion of the sealing disc 26 downwardly until it engaged the shoulder 25. This downward movement of the sealing disc at the moment of disunion enlarged the space above the sealing disc, thereby tending to create a vacuum. Here, as in the other cases, there was a tendency of the air to rush in through the crevice C to fill the space in the coupler, which the grease could not and would not expand to fill.




**PLAINTIFF'S EXHIBIT NO. 11.**
**Defendant's Structure; Lyman Compressor, Coupling and Nipple.**
(Filed Dec. 23, 1924.)

## The Lyman Company's Coupler Before the 6th C. C. A.

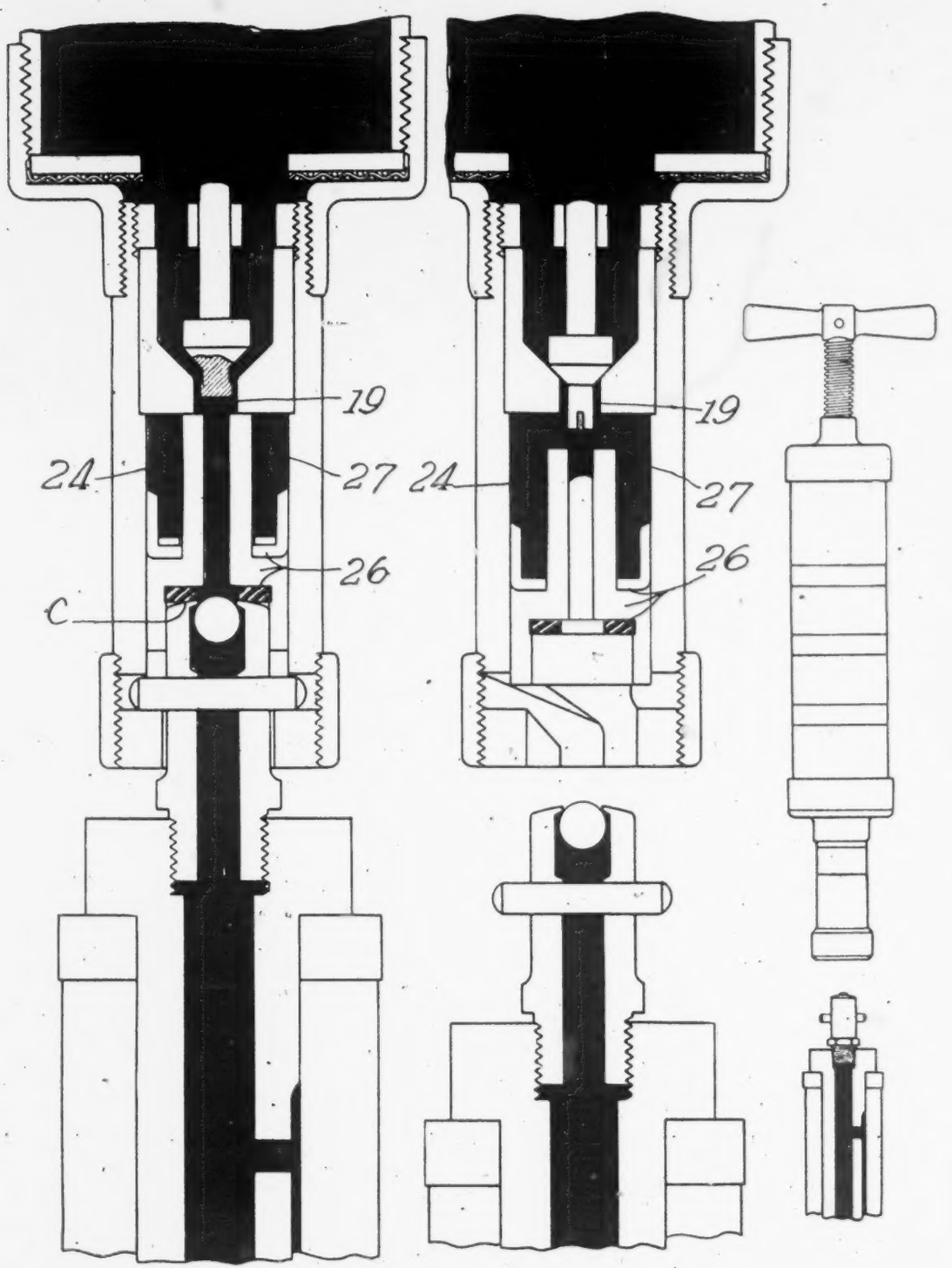
*The Lyman Manufacturing Co. v. Bassick*, Appeals Nos. 4461 and 4462, 6th C. C. A., 18 Fed. (2d) 29.

Opposite this page of this brief, we have reproduced Plaintiff's Exhibit Chart No. 11, which appears at page 231 of the record in the Sixth Circuit Court of Appeals in the case of *Lyman Manufacturing Company v. The Bassick Manufacturing Company*, Appeals Nos. 4461 and 4462, decided in the opinion reported at 18 Fed. (2d) 29. The record is in evidence here as a physical exhibit, Plaintiff's Exhibit 5.

Adjacent the drawing of the Lyman equipment we have reproduced the same drawing as Figure 6, with the addition, however, of the reference letters corresponding with those of the Gullborg patent and showing the position of the lubricant in red.

In this instance the sliding sealing member was made partly of leather and partly of metal. We have applied the reference numeral 26 to the three parts of this sliding element. The central lead line runs to the metal piston. The lower face of this metal piston was provided with a leather gasket, to which we have run the lowermost lead line from 26. At the top of this sliding metal piston there was provided a cup leather, to which we have run the uppermost lead line from the numeral 26. A central stem of metal projected upwardly from the metal part of the piston 26 to operate a valve with which we are not here concerned. There was an aperture through the metal piston and through the gasket which engaged the head of the fitting.

Here, as in the other cases, it will be seen that the space above the sealing member and within the bore 24 of the coupler is enlarged by and upon the downward movement of the sealing member under the expansive force of the spring 27.



The present decision of the Sixth Circuit Court of Appeals is in conflict with these prior decisions of the same court.

**The Decisions of the 2nd C. C. A. and the 3rd C. C. A. Covered Some Other Matters But Also Involved Decisions Holding Some or All of Claims 1, 2, 3, 4, 5, 6, 8 and 10 of Gullborg Patent No. 1,307,734 Valid and Infringed By Combinations of Fittings and Grease Guns and Couplers Essentially Identical With Those Previously Described.**

We refer to the decisions of the Second Circuit Court of Appeals in *Bassick* v. *Adams*, 52 Fed. (2d) 36, and *Rogers* v. *Alemite*, 74 Fed. (2d) 1019. We shall not occupy the time and space necessary to cover the details of these decisions.

**In Scores of Contested Cases the District Courts Have Uniformly Held That the Sale of Compressors Comprising Grease Pumps and Couplers Essentially Like Those Previously Described, Constituted a Contributory Infringement of Some or All of Claims 1, 2, 3, 4, 5, 6, 8 and 10 of Gullborg Patent No. 1,307,734.**

In so far as the decisions of these District Courts have been reported, they can be determined from the list of suits on pages 2 to 8 of this brief. The decisions which have not been reported may be found in the "Adjudication Books" of which we shall leave copies with the Clerk at the time of the arguments herein.

**In the Structure of the Gullborg Patent in Suit, As in the Case of All of the "Suction-Effect" Compressors Heretofore Held By the Sixth Circuit Court of Appeals and By the Seventh Circuit Court of Appeals and By Scores of District Courts to Infringe the Suction Effect Claims of the Gullborg Patent No. 1,307,734, It Is Necessary to Relieve the Pressure Upon the Grease in Order to Secure the Advantages of the "Suction Effect."**

In foot note No. 5 of the Sixth Circuit opinion, the Court said:

> "Of course, in order to allow this vacuum and suction to develop, any heavy pressure on the grease must be stopped, either by the check valve used in some forms, or by the release of the plunger pressure, or both; and if there is any failure in this relief the grease, perhaps after momentary retraction, will continue to exude."

In the case of the compressor sold by the appellant to Beezley it is just as necessary to relieve any heavy pressure upon the grease before detaching the coupler from the fitting as it is in the construction of the patent in suit and in all of the other constructions which have been held to be infringements of its suction effect claims.

If the bearings of an automobile or other machine are frequently lubricated or otherwise kept open and free, relatively little pressure is required to force new grease into their interstices.

In many instances, however, the bearings are new and tight or not lubricated as frequently as should be. In such cases, the old grease becomes carbonized or it accumulates a deposit of road dust in such a way as to cake and fill the interstices of the bearing with what

the mechanics call "gumbo,"—a hard mass of gritty material. A bearing which has been "caked" with this hard and gritty "gumbo" is called a "frozen" bearing.

Prior to the advent of the Gullborg system, it was necessary, when a bearing became "frozen," for a mechanic to disassemble the various parts and then to soak them in gasoline and then to wash them off to dissolve and remove the "gumbo". After the parts had been freed of this hard and gritty material, they could be reassembled, whereupon fresh grease could be forced more or less easily into the bearing. This cleaning of "frozen" bearings was generally a long and difficult job, which could be performed only by a mechanic who had the necessary special tools and wrenches necessary for the disassembly and the reassembly of the parts comprising the bearing.

Among the objects of his invention, as stated in Gullborg's specification, were the provision of "novel means for supplying a lubricant under pressure to the parts of an apparatus to be lubricated" (page 1, line 24), and the provision of "novel means for effectively sealing the joint between the coupling members so that the lubricant may be forced between the parts to be lubricated under a very heavy pressure" (page 1, line 38).

Lubricating apparatus built in accordance with the Gullborg patent has commonly been designed to develop pressures of from five thousand pounds per square inch to ten thousand or twelve thousand pounds per square inch. (These enormous pressures are to be contrasted with pressures of about fifty pounds per square inch in the case of city water works hydrants, and pressures of about two hundred fifty pounds per square inch in steam locomotive boilers).

The application of grease under a pressure of five or ten thousand pounds per square inch to a "frozen"

bearing will ordinarily break or dislodge the caked "gumbo" in such a way as to open a passageway or channel through the bearing to admit an injection of grease. The injected grease dissolves the "gumbo" and washes it out of the bearing. In this way, the bearing becomes freed and lubricated. This greasing operation avoids the trouble and expense of disassembling the bearing and washing and cleaning the parts in gasoline.

When, therefore, in the use of the Gullborg apparatus a tight or "frozen" bearing is encountered, the resistance which the caked "gumbo" offers to the ingress of grease, causes an enormously high pressure to be developed within the grease in all of the passageways leading to the bearing, including those of the pin fitting, the coupler, the conduit, and the grease gun itself.

Grease, like other liquids, is practically incompressible and non-elastic. When the compressor, conduit, coupler, and fitting are subjected to pressures of five thousand pounds or ten thousand pounds per square inch, there is, however, a tendency to bulge all of the parts within which the grease is confined, and particularly to bulge the conduit leading from the grease gun to the coupler. The result is that the walls of the conduit are very slightly stretched and expanded. Like any other material which is stretched or bent, these walls of the conduit tend to return to their normal size and shape, thereby maintaining a high pressure upon the grease even after the advancement of the plunger of the grease gun or pump has been stopped.

The effect of high pressure within the grease delivered from the grease pump to the pin fitting, is to lock the coupler to the pin fitting with a vise-like grip. The reason for this will be apparent by reference to the drawings of the Gullborg coupler, as reproduced, for

example, in Fig. 3. of this brief. The pressure of the grease acting on the back of the sealing disc 26 forces this sealing disc against the end of the pin fitting. The effect is like an effort to eject the pin fitting from the bore of the coupler. The pin fitting is not, however, ejected from the bore of the coupler because of the engagement of the projecting ends of the cross pin 31 of the fitting with the bayonet slots 22, 23 of the coupler. Since the engagement of the cross pin with the bayonet slots of the coupler prevents the ejection of the pin fitting from the coupler, the force of the grease upon the back side of the sealing disc 26 exerts itself in forcing the sealing disc against the end of the fitting. The result is not only to lock the coupler to the fitting with a vise-like grip, but also to seal the joint between the disc 26 and the head of the pin fitting in such a way as to prevent the escape of grease at this junction point. The higher the pressure, the tighter the seal. The higher the pressure, the greater the force with which the coupler is locked to the pin fitting. As manufactured and sold, the sealing disc has an area of approximately one-eighth of a square inch. The pressure which it exerts upon the end of the pin fitting is therefore approximately one-eighth of twelve thousand pounds. Each of the bayonet slots of the coupler as shown in the drawings of the Gullborg patent, has a "transverse portion 23 which is inclined from the inner end of the longitudinal portion of the slot toward the outer end of the coupling member" (specifications, page 2, line 1).

The Hollingshead Company's coupler of Exhibit A, Beezley Affidavit, has corresponding notches inclined from the inner end of the longitudinal portion of the slot toward the outer end of the coupling member. These notches are very readily brought into engage-

ment with the cross pin of the fitting when the coupler is attached to the pin fitting. These notches are also very easily disengaged from the ends of the cross pin of the fitting when, after the lubricating operation, the grease pressure has dropped again to zero. But while a grease pressure of five thousand pounds or ten thousand pounds per square inch persists, it is almost impossible either by hand or by means of any convenient tool, to rotate the shell of the coupler relative to the pin fitting in such a way as to disengage these locking notches of the bayonet slots of the coupler from the projecting ends of the cross pin of the fitting.

In the case of a bearing which is free of "gumbo," the grease passes so easily into the interstices of the bearing that little pressure can be or is developed in the grease. The force upon the back side of the sealing disc is correspondingly small. The coupler is only lightly locked to the pin fitting. The bulging of the conduit is negligible. When, therefore, the advancement of the plunger of the grease gun is arrested, any accumulated pressure in the grease quickly dissipates itself by the flow of grease into the free bearing, whereupon the coupler can easily be disengaged from the pin fitting.

In the case of a "frozen" bearing, a high pressure must be developed in order to break a passageway or channel through the caked "gumbo" of the bearing. As soon as an opening has been broken through the dike, the grease flows easily into or through the bearing with a rapid dissipation of the accumulated grease pressure. When and if this pressure is in this way relieved substantially to zero, then again the coupler can easily be rotated upon the pin fitting in such a way as to disengage the bayonet slots.

Sometimes, however, the channel or passageway

which is broken through the caked "gumbo" of the bearing, still offers high resistance to the flow of grease. In such cases, the pressure which has been developed in the grease will persist after the forward movement of the plunger of the grease gun has been arrested. The persistence of this pressure is due largely to the tendency of the flexible conduit and the other parts to return to their normal size and shape after having been bulged and expanded to a slight degree due to the internal pressure of the grease.

In such cases, it is desirable, therefore, to relieve the grease pressure within the barrel of the pump and the conduit and the coupler before attempting to rotate the coupler to disengage it from the pin fitting. In the form of grease gun illustrated in the Gullborg patent, this relief of the pressure is almost instantly accomplished by rotating the screw threaded piston rod one or two turns in the reverse direction. This slight retraction of the piston or plunger of the grease gun enlarges the space within which the grease is confined, thereby reducing its pressure substantially to zero. Thereupon, the coupler can be easily rotated in such a was as to disengage the notches at the ends of the bayonet slots of the coupler from the ends of the cross pin of the fitting.

The "suction effect" of the coupler comes into play whenever the coupler is disengaged from the pin fitting and when, therefore, the spring 27 of the coupler is permitted to force the sealing disc 26 toward the outer end of the coupler in such a way as to enlarge the space behind the aperture in the sealing disc. It is the enlargement of this space due to the forward movement of the sealing disc 26 under the force of the associated spring 27 which tends to create a vacuum just back of the aperture of the sealing disc, thereby creat-

ing the suction which sucks back through this aperture, any blob of grease which would otherwise be left in or upon the exposed end of the pin fitting.

If, by the use of a pipe wrench the coupler could be rotated, and were rotated in such a way as to disengage its bayonet slots from the ends of the cross pin of the fitting at a time when the grease within the barrel of the grease gun and within the conduit leading to the coupler were under a very high pressure, then in all likelihood the enlargement of the grease confining space due to the forward movement of the sealing disc 26 would not be as great as the contraction of the confining space due to the return of the bulged walls of the conduit to their normal size and position. Under these circumstances, the *net* result of the disengagement of the coupler from the pin fitting would not be an enlargement of the space within which the grease is confined, but rather a contraction of this space. The effect of this decrease in the volumetric capacity of the grease confining space would be to eject some grease through the aperture of the sealing disc 26 at the moment of disunion.

If, however, the grease pressure within the barrel of the pump and in the conduit and coupler have been reduced substantially to zero, either by the easy flow of grease into the interstices of the bearing or by a slight retraction of the plunger of the grease pump, then the net result of the detachment of the coupler from the fitting is to enlarge the space within which the grease has been confined. This enlargement of the grease confining space due to the forward movement of the sealing disc 26 under the force of the compressed spring 27 tends to create the vacuum which gives rise to the "suction" of this "suction effect" coupler.

In all of the respects having to do with this "suction

effect" the Beezley form of Hollingshead coupler is identical with the coupler of the Gullborg patent. In all of the respects having to do with the conditions under which the suction can be developed to effect the automatic self-cleaning of the head of the pin fitting the Hollingshead apparatus is identical with that of the Gullborg patent. That is to say: In the Hollingshead apparatus, as in the Gullborg apparatus, when the grease flows easily into the interstices of the bearing, the grease pressure quickly dissipates itself when the forward movement of the pump plunger is arrested, whereupon the coupler can be detached from the pin fitting under a condition of no grease pressure; in the Hollingshead apparatus, as in the Gullborg apparatus, when a free channel for the flow of grease is broken through the caked "gumbo" of a bearing, the grease pressure quickly dissipates itself upon stopping the forward movement of the pump plunger, whereupon the coupler can be disengaged from the pin fitting under the condition of no grease pressure; in the Hollingshead apparatus, as in the Gullborg apparatus, when only a slight and high resistant channel is broken through the caked "gumbo" of a "frozen" bearing, then the grease pressure will persist after the forward movement of the pump plunger is arrested; in such cases it will be difficult, if not impossible, to disengage the notched ends of the bayonet slots from the projecting ends of the cross pin of the fitting unless and until the grease pressure is reduced substantially to zero.

We have pointed out how in the Gullborg apparatus this grease pressure can be reduced substantially to zero,—even in the case of a "frozen" bearing which continues to offer high resistance to the inflow of

grease, by a slight retraction of the plunger or piston of the grease gun.

We should like now to explain in more detail the construction and mode of operation of the grease pump part of the Hollingshead compressor, in order to show how, in the cases in which it becomes necessary to do so, the pump plunger may be retracted to relieve the grease pressure prior to the disconnection of the coupler from the pin fitting.

**The Construction and Mode of Operation of the Grease Pump Parts of the Hollingshead Compressor.**

The Hollingshead compressor sold to D. A. Beezley is in evidence as a physical exhibit (Plaintiff's Exhibit A, Beezley Affidavit). The accompanying Fig. 7 is a drawing of this Hollingshead compressor in conjunction with an Alemite pin fitting of the kind with which it was intended that the Beezley compressor should be combined in use. In this drawing the coupler and pin fitting parts are, because of their intricacy, shown in enlarged scale.

The Hollingshead compressor sold to Beezley is of a size and kind adapted for use in service stations and garages where many cars are to be greased daily. The pumping part is supplied with grease from a reservoir having a grease capacity of approximately five gallons. The pumping part receives grease from this reservoir and pumps it on toward the coupler under low pressures or under pressures running up to several thousand pounds per square inch, depending upon the resistance which a particular bearing may offer to the injection of grease.

The five-gallon grease reservoir is shown at R. It

is mounted upon a pair of wheels which rest on the floor. The reservoir can be wheeled about from car to car by grasping the upright handle A. A big pipe-threaded plug can be removed from the side of the reservoir, whereupon it is filled with fifteen or twenty pounds of grease. After the plug has been screwed back into the grease-filling hole, the tire inflating hose of an air compressor is connected with an air inlet at the top of the reservoir and compressed air is blown into the reservoir until a pressure of about one hundred pounds per square inch is attained. The air inlet opening is then closed and the air hose removed. The gauge shows at all time the amount of the continued air pressure in the reservoir, and consequently the pressure upon the grease in the lower part of the reservoir. A pipe leads upwardly from a point near the bottom of the interior of the reservoir through an open globe valve and thence through a flexible hose F to the hollow grease supply pipe of the high pressure pumping part of the compressor.

This high pressure pumping part comprises a barrel 15 in the form of a casting, having an upright cylindrical bore in which the plunger 16 may be moved up or down. This plunger 16 is reciprocated by the handle 18, which is pivoted at its end to the barrel casting 15 and at an intermediate point to the upper end of the plunger 16.

The pipe through which the grease is supplied from the reservoir R to the high pressure pumping element communicates through a port or opening with the interior of the barrel 15 some little distance above the bottom of the barrel. Another port leads substantially from the bottom of the barrel to the high pressure conduit 19 which leads in turn to the coupler shown at the middle of the left side of the drawing. The

coupler is here shown in an enlarged scale, as a result of which the drawing indicates a break between the left-hand end of the conduit 19 and the coupler. There is of course no such break in the actual device. It is to be understood, therefore, that the drawing represents a conduit 19 which leads directly and continuously to the upper end of the coupler.

The operation of this apparatus is as follows: When the plunger 16 is moved into its uppermost position by the handle 18, as shown in this Fig. 7, the force of the compressed air in the top of the reservoir R causes some of the grease G to flow upwardly through the pipe P and the flexible hose F to the inlet port of the pump barrel 15. The grease flowing in through this port more or less completely fills the pump barrel below the plunger 16.

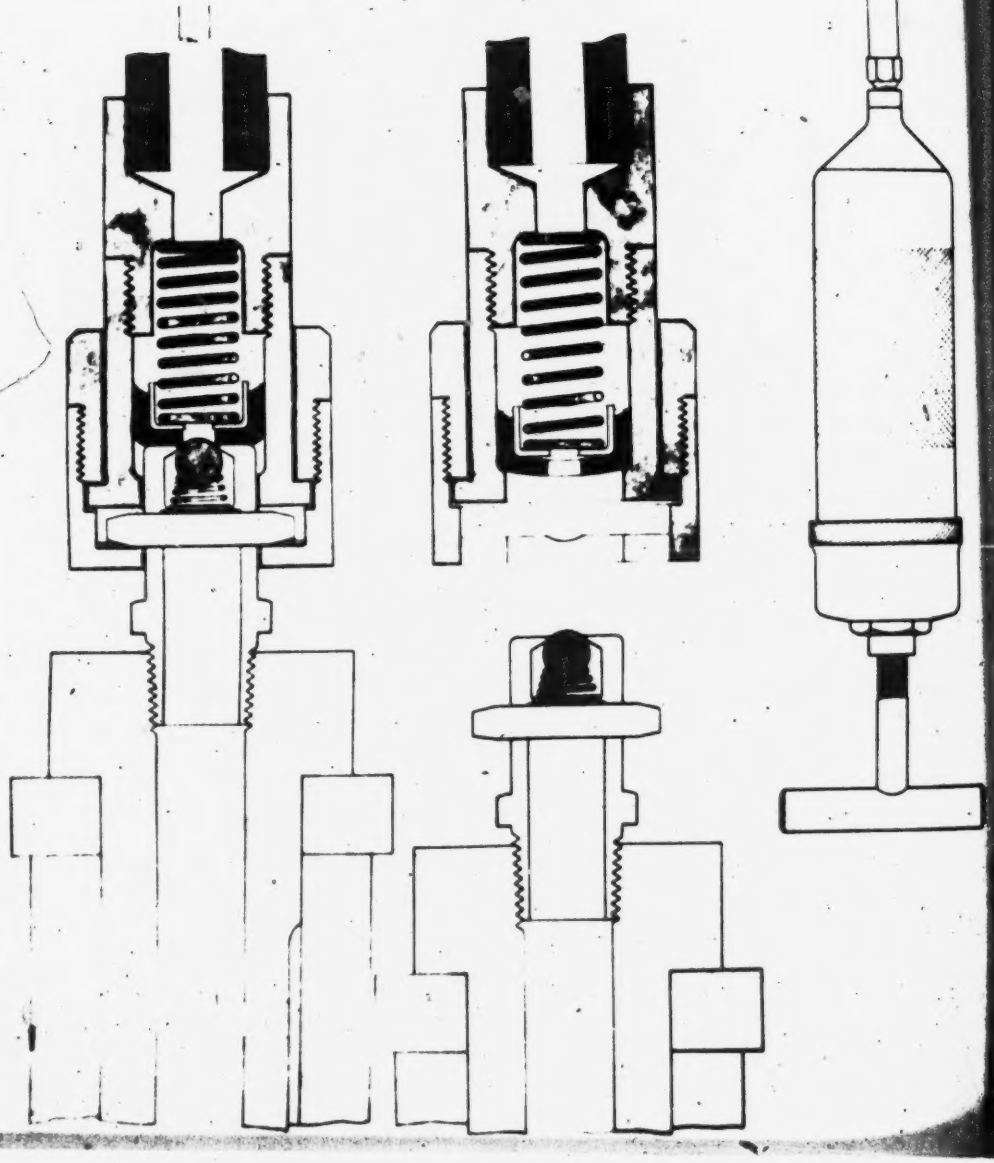
Consequently, upon the downward movement of the handle 18, the plunger 16 is moved downwardly to a position in which it closes the inlet port of the barrel 15. At this stage of the operation the positions of the parts are as shown in Fig. 8. At this time the pump barrel 15 is filled with grease throughout the space beneath the lower end of the plunger 16.

A further downward movement of the handle 18 causes the reciprocating plunger 16 to move downwardly within the pump barrel 15 to force the grease out of the pump barrel and through the conduit 19 and into the bore 24 of the coupler. It will be noted that the diameter of the barrel 15 and the associated plunger 16 is very small, and that the handle 18 provides a large leverage. The result is that an easy push on the handle 18 will deliver grease through the conduit and coupler and pin fitting and on into the interstices of a bearing under pressures which in the case of a frozen bearing run up into the neighborhod of 10,000 pounds per square inch.

NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE BASSICK MANUFACTURING COMPANY) EQUITY
vs. NO.
MONTGOMERY WARD & CO. INC. and 5160
THE LAREIN AUTOMOTIVE PARTS CO.

Plaintiff's Exhibit No. 140



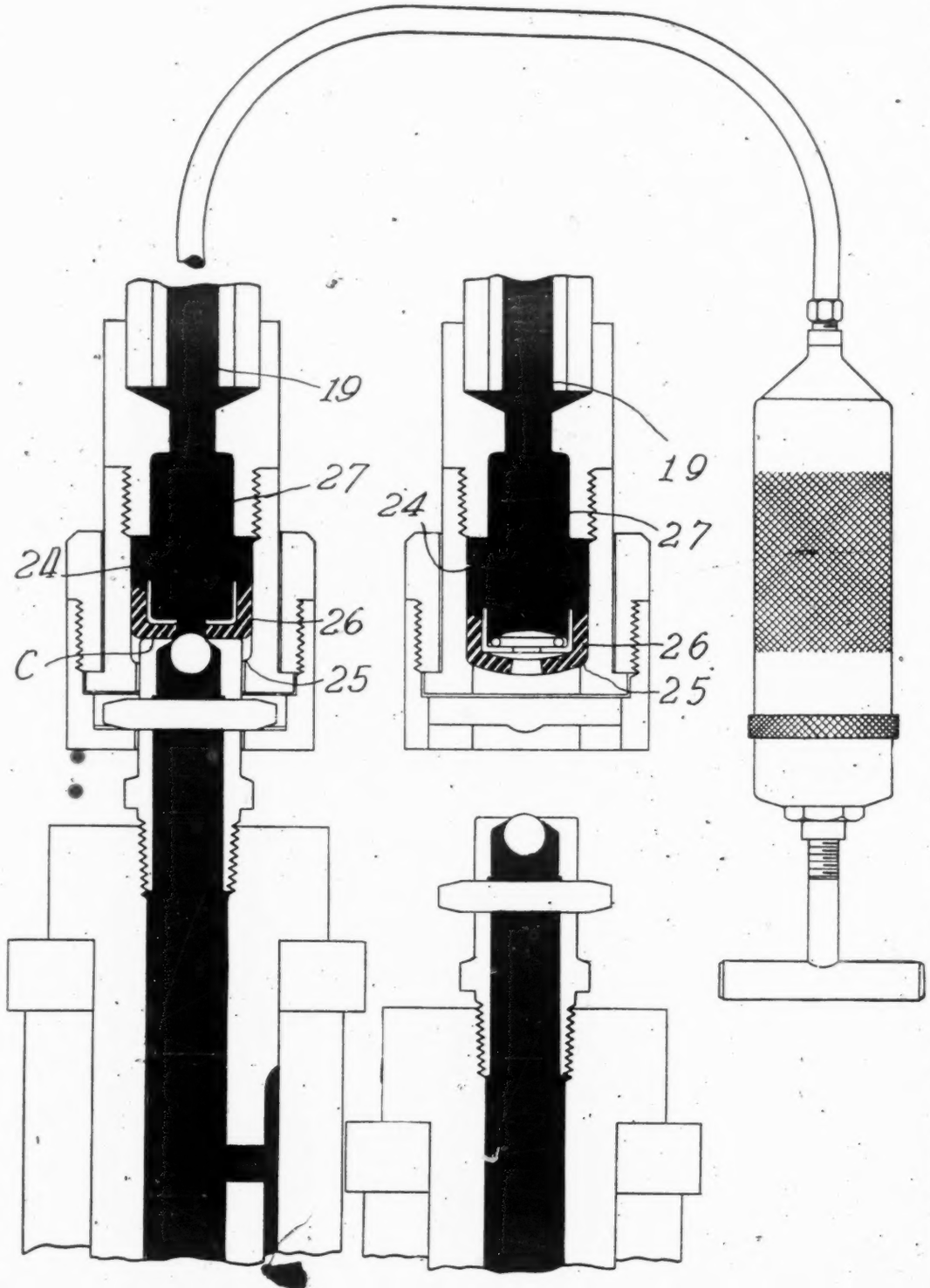
**The Larkin Company's Coupler Before the 7th C C. A.**

Opposite this page of this brief we have reproduced Plaintiff's Exhibit Chart No. 140, which appears at page 475 of the record in the case of *Larkin Automotive Parts Company et al v. Bassick*, in the Seventh Circuit Court of Appeals. The two volumes of this record were offered in evidence herein as Plaintiff's Exhibits Nos. 6 and 6-A, and are here as physical exhibits. This drawing illustrates the suction effect coupler manufactured and sold by the Larkin Automotive Parts Company. It was found to infringe by the Seventh Circuit Court of Appeals, 19 Fed. (2d) 944.

Adjacent the drawing of this Larkin equipment we have as Figure 3, reproduced the drawing with the addition of reference characters corresponding with those of the Gullborg patent.

As in the other instances, the left-hand view shows the coupler attached to the fitting. The conduit and the bore of the coupler are shown to be filled with grease. The sealing disc 26 is in the form of a cup leather; a spring 27 presses the cup leather 26 toward the shoulder 25.

When the coupler is detached from the pin fitting, as shown in the central view of Fig. 3, the spring 27 pushes the sealing disc 26 downwardly until it engages the shoulder 25, thereby enlarging the space within the bore 24 of the coupler. Here, as in the other instances, there is a tendency to produce a vacuum within the space above the sealing disc 26 and within the bore 24, because, as indicated in red in this central view, the grease cannot and does not fill the enlarged space which is created by the downward movement of the sealing disc upon the disconnection of the coupler from the pin fitting.



At the moment of disunion, "nature abhoring a vacuum" causes air under atmospheric pressure to rush in through the crevice at C, thereby carrying any excess lubricant from the head of the fitting into the space above the sealing disc 26 and within the bore 24 of the coupler.

A comparison of the drawing Figure 2 with the drawing Figure 3, shows that the device now held by the Sixth Circuit Court of Appeals *not to infringe* is *identical* with the device held by the Seventh Circuit Court of Appeals to infringe.

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As the reciprocating plunger 16 is forced downwardly from the position shown in Fig. 8 to the position shown in Fig. 9, substantially all of the grease within the barrel 15 is forced out through the opening which leads from the bottom of the pump barrel into the conduit 19, and thence into the coupler, pin fitting, and bearing.

If the interstices of the bearing afford an easy passage for the grease, the pressure in the conduit 19 and the associated coupler will immediately dissipate itself by virtue of the outflow of grease into the bearing and, if need be, through the bearing to the outside. In such cases the coupler can at once be easily detached from the pin fitting by rotating the coupler relative to the pin fiitting in such a way as to disengage the bayonet slots of the coupler from the projecting ends of the cross-pin.

When under such circumstances the coupler is disengaged from the fitting, the sealing disc 26 will be moved downwardly under the expansive force of the associated spring 27 in such a way as to enlarge the space behind the aperture of the sealing disc. This downward or outward movement of the sealing disc tends to create a vacuum upon which a suction is developed to suck back, into the coupler behind the aperture of the sealing disc, the blob of grease which would otherwise remain on the exposed end of the pin fitting. In Fig. 7 the right-hand view of the coupler shows the conditions at the time of detaching the coupler from the pin fitting, and attempts, at least, to depict in graphic fashion, the void left in the space just above the sealing disc and into which the excess lubricant is retracted into the coupler at the moment of disunion.

We have considered the operation in the case of a bearing whose passages are free of caked "gumbo," or in the case of a bearing in which a large channel for the

flow of grease is at once opened upon the application of the requisite grease pressure.

Let us assume now, however, that the bearing to be lubricated is heavily caked with a hard incrustation of "gumbo". Let us assume also that this incrustation of gumbo resists the inflow of fresh grease to an extent such that a very high pressure is developed upon the downward movement of the reciprocating plunger 16. Let us assume also that even this great pressure of grease punctures only a very small and narrow passageway through the gumbo. Under these circumstances the grease will flow into the bearing but only by overcoming the great resistance of the narrow passageway which has been channeled through the grit in the bearing. Under these circumstances a considerable pressure will persist in the conduit 19 for several seconds, or perhaps even for several minutes, after the reciprocating plunger 16 has been forced to the lower end of the barrel 15.

If, during the persistence of this considerable pressure in the conduit 19 and the bore 24 of the coupler, it is attempted to remove the coupler from the pin fitting, it will be found almost impossible to disengage the notches of the coupler from the projecting ends of the cross pin of the fitting. And, as previously pointed out, if by the application of the brute force of a Stillson wrench the coupler were rotated sufficiently to disengage the notches of the bayonet slots, the contraction of the bulged walls of the conduit 19 would probably contract the grease confining space more than the downward movement of the sealing disc 26 would enlarge it. In such event there would be an extrusion of more or less grease through the aperture of the sealing disc 26, rather than a suction and retraction of grease back through this aperture to the interior of the coupler.

The high pressure pumping part of the Hollingshead compressor is, however, perfectly adapted to relieve the pressure which might otherwise persist in the conduit 19, and in such a way as to release the grip of the coupler upon the fitting and in such a way as to prevent the extrusion of grease at the moment of disunion. This relief of any pressure which under some conditions might persist in the conduit 19, is effected by a slight upward movement of the handle 18. After the handle has been fully depressed in such a way as to drive the plunger 16 to the bottom of the barrel 15 to force one charge of grease through the conduit 19, the handle 18 is raised from the position shown in Fig. 9 to the position shown in Fig. 10. This movement of the handle 18 causes an upward movement of the plunger 16 from the position shown in Fig. 9 to the position shown in Fig. 10. Upon this slight retraction of the plunger 16, any pressure in the conduit 19 and the associated coupler is immediately relieved by a back flow of the grease from the conduit 19 into the bottom of the barrel 15. This backward flow of grease from the conduit 19 immediately permits the bulged walls of the conduit 19 to resume their normal size and position, whereupon any pressure which may have existed in the grease within the conduit 19 and its associated coupler is immediately reduced to zero.

This relief of the pressure within the conduit 19 of the Hollingshead apparatus is effected in substantially the same way as is the relief of any persisting pressure within the conduit of the Gullborg apparatus as shown in the patent in suit. In both cases the relief of pressure is effected by a slight backward or retractive movement of the pumping plunger. The only difference is that in the one case the plunger is retracted by moving the handle to rotate the screw-threaded piston

rod within its nut, whereas in the other case the plunger is retracted by swinging the operating handle in a lever-like way about its fulcrum.

When any persisting pressure in the conduit 19 has been reduced to zero by this slight retractive movement of the reciprocating plunger 16, the associated coupler may easily be detached from the pin fitting with which it has been connected. Thereupon the forward movement of the sealing disc 26 under the force of the associated spring 27 will tend to create a vacuum, which causes a suction at the aperture of the sealing disc just at the moment of disunion to suck back into the interior of the coupler the blob of grease which otherwise would be left upon the head of the fitting.

The coupler of the Hollingshead apparatus may then be connected with another pin fitting of another bearing. Thereupon the handle 18 is moved to its uppermost position, as shown in Fig. 7, whereupon a fresh charge of grease is forced from the reservoir R through the flexible hose F into the barrel 15. As soon as this barrel 15 has in this way been filled, the handle 18 is again brought down to the position shown in Fig. 9, whereupon a charge of grease is forced into the second bearing.

This cycle of operations will of course be repeated until all of the chassis bearings of an automobile have been lubricated.

When all of the bearings of an automobile have been greased, the handle 18 should, in accordance with the instructions of the Hollingshead Company's advertising sheet, *supra* be left in its lowermost position, as shown in Fig. 9. If it were left in the upper position, as shown in Fig. 7, then the air pressure in the reservoir R would force a stream of grease through the pipe P, the flexible hose F, the inlet port of the barrel

15, the outlet port of the barrel 15, the conduit 19, and out through the aperture in the sealing disc 26 of the associated coupler. If the handle 18 and the associated plunger 16 were left in their upper position, as shown in Fig. 7, at a time when the associated coupler was not connected with any pin fitting, all of the five gallons of grease within the reservoir R would, in the course of an hour or so, be spurted out upon the floor through the aperture in the sealing disc 26. The globe valve in the pipe line PF may be closed at night so as to prevent the accidental occurence of such a catastrophe,—in grease.

It will be evident from the foregoing description that the Hollingshead apparatus can be operated in such a way as to secure the automatic cleansing of the head of the pin fitting upon *every* detachment of the coupler from a pin fitting, and regardless whether the grease pressure within the conduit 19 is relieved by an easy flow of grease through the interstices of the bearing or by a slight retraction of the recipricating plunger 15 just prior to the detachment of the coupler from the pin fitting. By a proper manipulation of the pumping element the pressure in the conduit 19 can be relieved prior to the disconnection of the coupler from the pin fitting, even in the case of the most tightly "frozen" bearing.

All of these things were easily and quickly demonstrated in the District Court with and by the physical Exhibit A, Beezley Affidavit. Very probably it was because these demonstrations were so complete and so conclusive that the Hollingshead Company did not, in connection with its first appeal, assign any error relative to the finding and holding of the District Court that the Hollingshead Company's sales of this compressor and "suction effect" coupler constituted a con-

tributory infringement of claims 1, 2, 3, 4, 5, 6, 8 and 10 of the Gullborg patent, and should therefore be enjoined.

It will be evident, however, that a man could, if he wished, misuse the Hollingshead apparatus in such a way as to cause grease to be spurted out onto the floor at the time of disconnecting the coupler from the pin fitting. This could be done in either of two ways.

(1) The coupler could be connected with a pin fitting screwed into a hole which had no outlet or which had only an extremely high resistance outlet for the flow of grease. The handle 18 could then be operated to pump up an enormous pressure in the conduit 19 and the associated coupler and pin fitting. At the conclusion of the pressure pumping operation, the handle 18 and the reciprocating plunger 16 could be left in their lowermost positions, as shown in Fig. 9. Then, without raising the handle 18 to relieve the pressure in the conduit 19 in the slightest degree, the coupler could by the application of sufficient brute force be rotated in such a way as to disengage the bayonet notches from the ends of the cross pin of the fitting, whereupon the coupler could be detached from the fitting. The walls of the conduit 19 would then collapse in such a way as to spurt grease out through the aperture in the sealing disc, and in such a way, obviously, as to prevent the "suction effect" from performing its cleansing function.

(2) A second way of misusing the Hollingshead apparatus in such a way as to cause grease to spurt out into the atmosphere upon the detachment of the coupler from the pin fitting, would be as follows: The coupler could be attached to a pin fitting connected, this time, either with a normally free and open bearing

or with an abnormally high-resistant bearing. The pump mechanism could then be operated to develop either a low pressure, in the case of the normal bearing, or a high pressure, in the case of a high-resistant bearing. In this case it would be essential, however, upon the completion of the pumping operation, to move the handle 18 and the reciprocating plunger 16 to their uppermost positions, as shown in Fig. 7. Then, upon the removal of the coupler from the pin fitting, there would be left an absolutely free and open passage for the flow of grease from the reservoir R on into the great outdoors. Under these circumstances the compressed air in the top of the reservoir R would force a stream of grease to flow up through the pipe P, the flexible hose F, the pumping barrel 15 (with both of its ports now wide open, because the handle and piston had been brought to and held in their uppermost positions), and thence through the conduit 19 and the hole in the end of the sealing disc 26. Under such manipulation of the apparatus, a stream of grease would be squirted out of the hole in the end of the coupler as long as one might choose to watch it, or at least until the five gallons of grease had been blown out of the reservoir R.

This misrepresentative use of the Hollingshead compressor could, indeed, be made without any pumping operation at all. Without having reciprocated the plunger 16 to deliver any grease whatsoever into the bearing of the connected pin fitting, the handle 18 could be brought to its uppermost position, as shown in Fig. 7, whereupon the coupler could be detached from the pin fitting. Thereupon the air pressure in the reservoir R could be relied upon to squirt a stream of grease out through the hole in the end of the sealing disc 26 in simulation of the play of a garden hose.

Either of these methods of misusing the Hollingshead apparatus would of course waste buckets of grease. Either method of misuse would make a grease-smeared mess of any automobile which might be subjected to it. Either method of misuse would soon convert any garage into a greasy quagmire.

If, on the other hand, the Hollingshead apparatus is used in the manner indicated in the Hollingshead advertising literature, and as more fully explained in the foregoing pages of our brief, the function of the "suction effect" coupler will come into play in such a way as to prevent the waste of grease, in such a way as to prevent the greasy ruination of both automobile and garage, and in such a way as automatically to remove from the head of each pin fitting the little blob of grease which would otherwise be left upon it at the time of detaching the coupler.

## E.

**The Error Urged By the Petitioner Lies in the Holding of the Sixth Circuit Court of Appeals That the Hollingshead Company's Sales of These Beezley Exhibit A Compressors Did Not Constitute a Contributory Infringement of Claims 1, 2, 3, 4, 5, 6, 8 and 10 of Gullborg Patent 1,307,734.**

The error of the Sixth Circuit Court of Appeals appears in the following paragraphs of its opinion (Rec., pp. 603-604):

> "Considering first claims 1, 2, 3, 4, 5, 6, 8 and 10 of the Gullborg patent, it is apparent that no infringement exists. . . .
>
> "Each of the claims here under consideration is limited to a coupler having a suction effect, con-

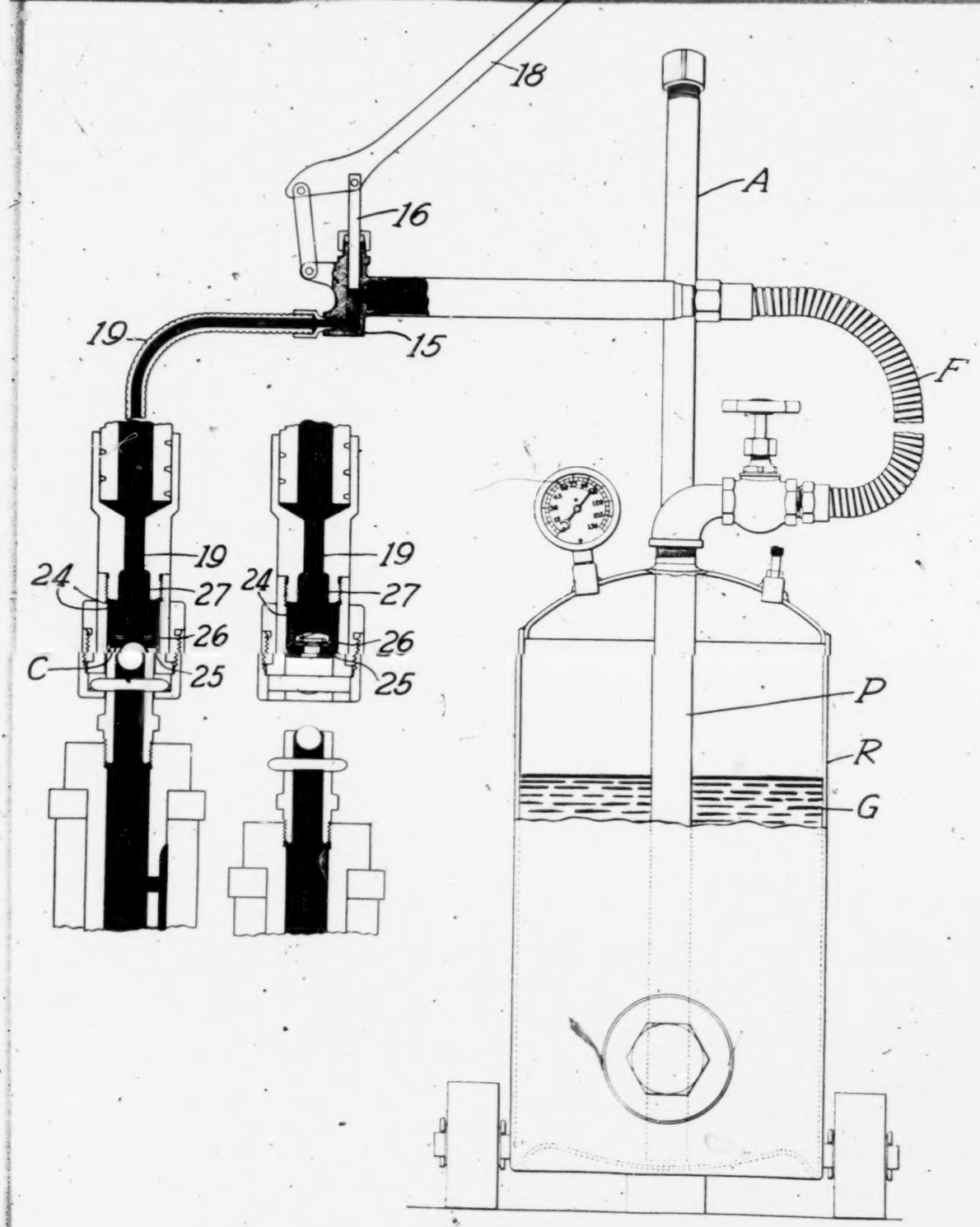


FIG. 7.

HOLLINGSHEAD'S "BEEZLEY TYPE COMPRESSOR".

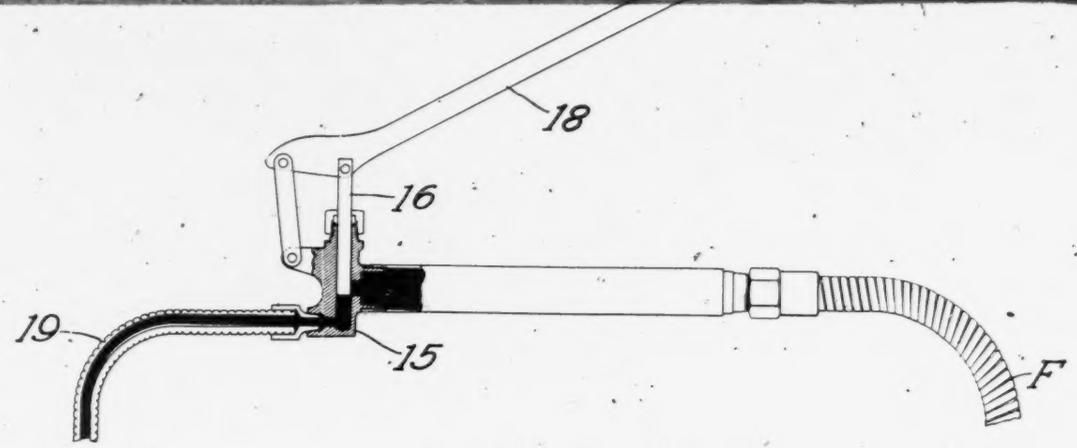


FIG. 8.

THE INLET PORT IS CLOSED.

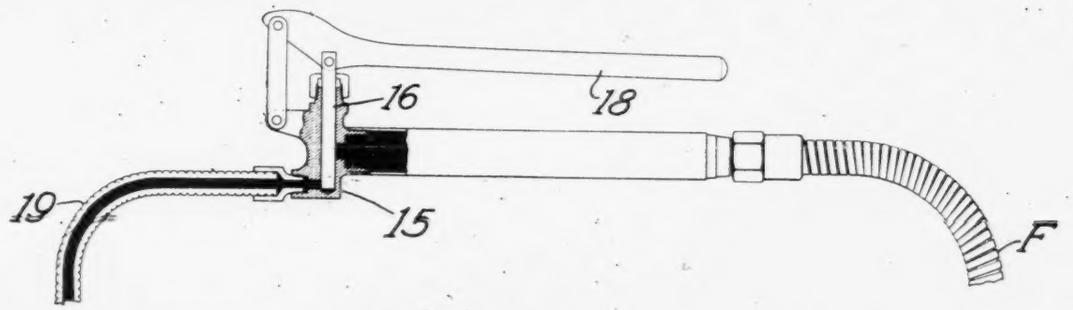


FIG. 9.

ALL OF THE GREASE IN THE BARREL HAS BEEN FORCED INTO THE CONDUIT 19.

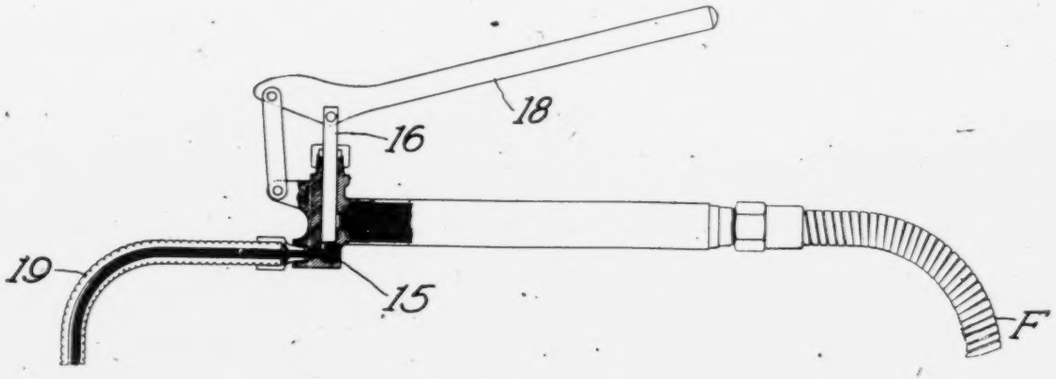


FIG. 10.

THE HANDLE 18 AND THE PLUNGER 16 ARE RAISED TO RELIEVE THE PRESSURE IN THE CONDUIT 19.

sisting of a perforated sealing disc slidably mounted, or other equivalent means. The accused device of appellant is the old and well known grease gun or compressor with a coupling means which contains no sliding disc or cup washer or any mechanical means for producing suction effect designed to remove excess lubricant. Such retraction of excess lubricant as was made to appear upon demonstration was slight and was apparently only that commonly incident to the movement of grease upon release of pressure. The accused structures therefore lack the vital element previously found essential for the validity of the several claims relied upon. To give them the breadth of construction necessary to find infringement would be to give to specific improvements in matter of form and structure a scope wholly unwarranted by any precedent."

## F.

## The Argument.

It strikes us that we can perhaps most fairly and completely summarize the gist of our argument by quoting verbatim the concluding paragraph of our brief in support of our petition for a rehearing in the Sixth Circuit Court of Appeals. In that petition and brief we said:

> "In the Structure of the Gullborg Patent in Suit, As in the Case of All of the Suction Effect Compressors Heretofore Held by This Court and by the Seventh Circuit Court of Appeals and by Scores of District Courts to Infringe the Suction Effect Claims of the Gullborg Patent No. 1,307,734, It Is Necessary to Relieve the Pressure Upon the Grease in Order to Secure the Advantages of the 'Suction Effect.'

"This matter was referred to in a foot note to the opinion of this Sixth Circuit Court of Appeals in the Lyman, Peerless, O. K., Larkin, Wag's, and Riggs cases, reported at 18 Fed. (2d) 29. Thus in foot note 4, the Court said:

> 'Of course, in order to allow this vacuum and suction to develop, any heavy pressure on the grease must be stopped, either by the check valve used in some forms, or by the release of the plunger pressure, or both; and if there is any failure in this relief the grease, perhaps after momentary retraction, will continue to exude.'

"In the case of the compressor sold by the appellant to Beezley it is just as necessary to relieve any heavy pressure upon the grease before detaching the coupler from the fitting as it is in the construction of the patent in suit and in all of the other constructions which have been held to be infringements of its suction effect claims. At the argument of this appeal, which occurred a year prior to the filing of the opinion on November 14, 1934, we demonstrated to the Court the manner in which the plunger of the defendant's pumping element must be retracted slightly in order to prevent the continued extrusion of grease upon the detachment of the coupler from the pin fitting.

"In view of the statement in your Honors' opinion of November 14, 1934, that in the defendant's compressor 'such retraction of excess lubricant as was made to appear upon demonstration was slight and was apparently only that commonly incident to the movement of grease upon release of pressure,' we are constrained to believe either (1) that at the time of the argument your Honors were not sufficiently familiar with the point in question to understand or to observe the demonstration of the suction effect cleansing action in the defendant's compressor which was sold to Beezley; or (2) that during the interval between the demonstration and the preparation of the opinion

your Honors forgot what had been demonstrated at the argument; or (3) that your Honors have confused the operation of the defendant's non-suction effect coupler (forming a part of the compressor sold to Cumming) with the operation of the suction effect coupler forming a part of the compressor sold by the Hollingshead Company to Beezley.

"The defendant, Hollingshead Company, took certain testimony to show that its Beezley type compressor *could* be operated in such a way as to destroy the utility of the suction effect. What the defendant did in this connection was in one way or another to apply or to maintain the application of a heavy pressure upon the grease in the conduit at the moment of disunion.

"Under such circumstances grease would of course be extruded at the moment of disunion and as a matter of fact would and did continue to be extruded for a long time after the disconnection of the coupler from the fitting.

"The fact, however, that this extrusion of grease at the moment of disunion was due to a deliberate misuse of the plunger mechanism of the gun was perhaps best demonstrated by the fact that when a sample of the plaintiff's 'Gullborg-Alemite coupler,' substantially identical with that of the Gullborg patent in suit, was substituted for the Hollingshead Company's coupler as a part of the gun sold to Beezley, the grease, under the defendant's misuse of the pump mechanism, was extruded at the moment of disunion precisely as it was when the Hollingshead coupler was used. Mr. Gibson, the defendant's expert witness, concluded his discussion of this matter at the bottom of page 209 of the record, where he said:

'The Gullborg coupler construction, such as the Alemite coupler, would not be capable of producing the (suction effect) function and result ascribed to it by Gullborg with a pump and

equipment of the type exemplified by defendant's exhibit No. 8-A, for the reason herein above stated.'

(Defendant's Exhibit No. 8-A having been claimed to be identical with the compressor sold by the Hollingshead Company to Mr. Beezley.)

"Nowhere in the Hollingshead Company's briefs has it been claimed that the Hollingshead coupler of the kind sold to Beezley was not or is not of the suction effect type. The Hollingshead Company's sole contention in regard to this matter was that the more strictly pumping part of the compressor was of a kind such that the grease pressure could not be relieved before the suction effect coupler was disconnected from the pin fitting.

"The fact is, however, that while the pump parts of the Hollingshead Company's gun can be operated in such a way as not to relieve the pressure, they can also be operated in such a way as to relieve the pressure. Such a relief of the pressure in the defendant's gun sold to Beezley was demonstrated to your Honors at the time of the argument.

"We should greatly appreciate an opportunity again to make this or similar demonstrations.

"The substantial identity between the compressor sold by the Hollingshead Company to Mr. Beezley and the suction effect compressors previously held by this court to infringe the suction effect claims of the Gullborg patent was so clear and unquestionable that upon its first appeal in this case the Hollingshead Company did not even assign as error the finding in the decree of the District Court that its sale was an infringement of the suction effect claims of the Gullborg patent. No assignment of error was based upon the part of the decree enjoining the defendant against the further sale of compressors of the Beezley type.

"In Conclusion Relative to the First Ground of this Petition for a Rehearing.

"The compressor sold by the Hollingshead Company to Mr. Beezley is a suction effect compressor substantially identical in its construction and mode of operation with that of the Gullborg patent in suit, and with that heretofore and now sold by the plaintiff, and with those heretofore held by this Sixth Circuit Court of Appeals and by the Seventh Circuit Court of Appeals (and by scores of District Courts throughout the country) to infringe the suction effect claims of the Gullborg patent in suit. Your Honors' opinion of November 14, 1934, is the only holding by any one of the many courts which have passed upon this Gullborg patent, that such a device as the defendant's Beezley type gun is not an infringement of the suction-effect claims of this Gullborg patent No. 1,307,734.

"We respectfully submit that your Honors' decision upon this phase of this case is based upon errors of fact and understanding.

"We most earnestly urge upon the Court to grant this petition and to afford us an opportunity to show and make such demonstrations as will convince your Honors of the errors upon which the opinion of the court dated November 14, 1934, is based.

"We did not in the trial of this case undertake to introduce the testimony of any expert witnesses. It was our opinion that the subject matter was simple, that the language was clear and unmistakable, and that the apparatus offered in evidence was sufficient in and of itself to demonstrate its construction and mode of operation.

"Furthermore, the unbridled employment of expert witnesses in patent cases has often been most emphatically condemned by the Federal Courts. *e. g.:*

*David et al.* v. *Harris,* 206 Fed. 902, 904, Second C. C. A. 1913. Opinion by Coxe, C. J.

*Kohn* v. *Eimer et al.*, 265 Fed. 900, 903, 2nd C. C. A. 1920. Opinion by Learned Hand, D. J.

*Ball & Roller Bearing Co.* v. *F. C. Sandford Mfg. Co.*, 260 Fed. 415, D. C. Conn. 1922. Thomas, D. J.

*Marconi Wireless Tel. Co. of America* v. *De-Forest Radio Telephone & Telegraph Co.*, 243 Fed. 560, 563, 2nd C. C. A. 1917. Opinion by Hough, C. J.

*Safety Car Heating & Lighting Co.* v. *Gould Coupler Co.*, 239 Fed. 861, 865, 2nd C. C. A. 1917. Opinion by Hough, C. J.

*Hardinge Conical Mill Co.* v. *Abee Engineering Co. et al.*, 195 Fed. 936, 940, 2nd C. C. A. 1912. Opinion by LaCombe.

*Victor Talking Mach. Co.* v. *Sonora Phonograph Corp.*, 221 Fed. 676, 677, D. C. S. D. N. Y. 1915. Mayer, D. J.

*I. T. S. Rubber Co.* v. *Essex Rubber Co.*, 270 Fed. 593, 605, D. C. Mass. 1920. Anderson, C. J.

*American Stove Co.* v. *Cleveland Foundry Co. et al.*, 158 Fed. 978, 985, 6th C. C. A. 1908. Opinion by Severens, C. J.

*Sundh Electric Co.* v. *General Electric Co.*, 204 Fed. 277, 279, 2nd C. C. A. 1913. LaCombe, C. J.

*Fay* v. *Mason et al.*, 127 Fed. 325, 333, 2nd C. C. A. 1903. Townsend, C. J.

*Thomson-Houston Electric Co.* v. *H. W. Johns Mfg. Co.*, 105 Fed. 249, 250, C. C. S. D. N. Y. 1900. LaCombe, C. J.

*National Mach. Corp. Inc.* v. *Benthal Mach. Co. Inc.*, 241 Fed. 72, 86, 4th C. C. A. 1916. Opinion by Pritchard, C. J.

*Fried. Krupp Aktien-Gesellschaft* v. *Midvale Steel Co.*, 191 Fed. 588, 3rd C. C. A. 1911. Opinion by Buffington, C. J.

"Still furthermore, at the time of the trial of the instant case the Gullborg patent in suit had been the subject of repeated litigations. Many of them had been the subject of appeals pending or disposed of by this very court of appeals.

"The Hollingshead Company on the other hand did introduce expert testimony. The arguments and the conclusions of the defendant's expert were in our opinion best answered by the devices themselves, which were in evidence as physical exhibits.

"The result is that we have had to rely and will have to rely in this case upon the court's examination and understanding of the physical exhibits. A demonstration of some of these exhibits completely refutes the contentions of the defendant's expert witness and will demonstrate the errors of fact upon which your Honors' opinion of November 14, 1934, is based.

"If your Honors' opinion in this present case is to stand, it means simply that the Hollingshead Company has the right to sell lubricating equipment substantially identical with that described in the patent in suit and substantially identical with that upon which the plaintiff's entire business has been built.

"Again let us say that we urge upon the court the propriety and as we see it, the necessity, for a rehearing."

**The Defendant-Respondent's Contentions.**

The gist of the respondent's contentions relative to the sole question raised by this writ of certiorari can be gathered from the following paragraphs (pages 8 and 9) quoted from the so-called appendix to respondent's brief in opposition to our petition for a writ of certiorari:

"The only evidence in the record (pages 196 to

199, inclusive, and pages 227 and 228 of record) is to the effect that respondent's large 'service' *grease-gun* is inherently of such a construction as makes it **impossible** to produce any so called 'suction effect' or 'self-cleansing' action in the coupler part of the *grease-gun* at the moment of disunion from the 'fitting' . . .

"The **only** *grease-gun* unit (a 'grease-gun' comprising generally a combination of a pump, a hose and a coupler) which respondent is charged to have sold to Beezley, is respondent's large 'service' type *grease-gun* unit exemplified by plaintiff's 'Beezley Exhibit A,' and also exemplified by Defendant's Exhibits 8 and 41, and the testimony of the expert (which was not controverted) is to the effect that the normal (and any possible) operation of this *grease-gun* unit produces a pressure in the coupler part many hundred times greater than the very slight amount of vacuum or 'suction' which could possibly be produced within the coupler element, and that this much larger *pressure cannot be relieved* prior to disunion, by virtue of the inherent construction and the inevitable mode of operation of this *grease-gun* unit, and that upon repeated applications of this *grease-gun* unit to so-called 'fittings' or grease-cups (and corresponding disunions), this respondent's *grease-gun* unit produced no 'suction' or 'self-cleansing,' but, on the contrary, produced a substantial exudation of grease upon each and every disunion."

(The emphasis is not ours, but that of respondent's counsel).

## In Reply to the Defendant-Respondent's Contentions.*

### 1. The Testimony of the Hollingshead Company's Expert Witness.

This suit was brought and tried in the District Court for the Western District of Tennessee.

Prior to the trial, the defendant-respondent did something which was a little unusual, to say the least. Instead of having its principal witness (or indeed any substantive witness) appear at the trial in open court, it went to Philadelphia to take the deposition of a man named Hugo C. Gibson, who gave certain qualifications as an expert witness. Long prior to his deposition, the compressors sold by Hollingshead to Cumming and to Beezley had been filed as exhibits to the affidavits of Cumming and Beezley in support of a mo-

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* It is at best a rather unpleasant duty to reply to such representations and "arguments" as are made by the present counselors for the defendant-respondent.

The circumstances of this case seem to us to make it only fair to everyone concerned to note that Mr. Charles Evan Hughes was retained by the Hollingshead Company to appear for it in connection with the Hollingshead Company's first appeal to the Sixth Circuit Court of Appeals, and in connection wth that appeal only. Upon that appeal counsel for the Hollingshead Company, including Mr. Hughes, expressly conceded by the previously quoted treatment of the defendant's assignment of error, the validity of claims 1, 2, 3, 4, 5, 6, 8, and 10 of the Gullborg patent, and conceded also the correctness of the holding of the District Court that the sale of the Beezley Exhibit A compressor constituted a contributory infringement of these claims of this patent.

Mr. Hughes was appointed to the bench of this court subsequent to the filing of the Hollingshead Company's brief in the Sixth Circuit Court of Appeals, but prior to the oral argument of that appeal. He promptly withdrew his appearance in this case and did not, of course, participate in the oral argument of it.

That first appeal was subsequently dismissed for the reasons stated in the opinion of the Court as reported at 50 Fed. (2d) 592, and 53 Fed. (2d) 470.

None of the contentions or arguments of non-infringement by the Hollingshead Company's sale of the Beezley type compressors were made during Mr. Hughes' connection with the Hollingshead case. All of these contentions and arguments were, for the first time, advanced in the Court of Appeals and in this Court after the appointment of Mr. Hughes as the Chief Justice.

tion for preliminary injunction. (Beezley and Cumming were present to testify at the trial, whereupon counsel for the defendant stipulated that their affidavits (Rec., pp. 19 and 26) as previously filed in support of the motion for preliminary injunction might be accepted in lieu of their oral testimony.)

Beezley Exhibit A, and Cumming Exhibit A, were never seen or examined by Mr. Gibson. He never testified regarding them, nor regarding any of the exhibits upon which the plaintiff's case was based. At the time of his deposition, Mr. Gibson was handed some pieces of apparatus, never identified by him, and never identified by anyone else.

Counsel for the defendant merely handed Mr. Gibson a piece of apparatus and adjusted the record to show this fact. Thus, on page 193 of the record, we find this:

> "Mr. Gibson was handed a piece of apparatus and stated that this apparatus consists of a container for holding lubricant, in the form of a cylinder having a piston and a plain piston rod and handle, a brush clutch upon the piston rod; the piston rod passing through a cover placed at one end of the cylinder. The piece of apparatus is a 'compressor' for lubricating parts of machinery and on the cover of the lubricant receptable member appear the words: 'Whiz High Pressure Grease Gun No. 20, R. M. Hollingshead Co., Camden, N. J.'"

After Mr. Gibson had discussed the construction and mode of operation of this unidentified piece of apparatus, it was offered in evidence as Defendant's Exhibit Nos. 6, 6-A, 6-B, and 6-C "all forming parts of defendant's hand compressor No. 6." (Rec., p. 194). The circumstances were the same in connection with

the various pieces of apparatus discussed by Mr. Gibson.*

If the apparatus discussed by Gibson is identical with that sold to Cumming and to Beezley, there is no point in our criticism as to its lack of identification. If it differs from the apparatus sold to Cumming and to Beezley, then there is point in our criticism.

We have not had a very good opportunity to examine critically the apparatus about which Mr. Gibson testified, and have not perhaps concerned ourselves very deeply in regard to its details of construction, for the reason that the case hinges upon the devices actually sold to Beezley and Cumming. Some of the arguments advanced by counsel for the respondent would lead one to suspect that some of the apparatus about which Gibson testified differs in some respects from the apparatus sold to Cumming and to Beezley. Furthermore, counsel for the respondent have for some reason clung very tenaciously to a constant and repeated reference to the Defendant's Exhibits as paralleling or duplicating the plaintiff's exhibits,—at least the plaintiff's exhibits as respondent's counsel claim them to have been when originally offered in evidence. Their final argument in the Court of Appeals was, as we shall see, based upon the contention that counsel for the plaintiff-petitioner had tampered with and corrupted the plaintiff's exhibits after they had been offered in evidence.

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* We do not overlook the fact that Roderick W. Smith, a district sales manager of The R. M. Hollingshead Company was subsequently called as defendant's witness. The following is typical of his testimony: "The witness identified the device here in evidence as Defendant's Exhibit No. 8 as the high pressure chassis lubricator of The R. M. Hollingshead Co. It is a machine used for lubricating the chassis of an automobile with grease."

It certainly was nothing which the Hollingshead Company was selling at the time his deposition was given, because it was then, and had for a long time, been under a preliminary injunction not to sell equipment of this kind.

We suspect that counsel for the respondent still have it in mind to base their final arguments in this court upon some such unsupported charge of tampering and corruption, as was addressed to the Sixth Circuit Court of Appeals in the final reply argument of counsel for the respondent. This suspicion is based in part upon such statements and presentations as are made by counsel for the respondent in such paragraphs as the following, quoted from pages 1 and 2 of their brief in opposition to our petition for writ of certiorari. Counsel for respondent there say:

> "The respondent **never** sold *couplers*. It sold two (two kinds or types of grease guns) *grease guns;* one sold to Cumming and the other sold to Beezley. Duplicate specimens of each of these two *grease guns* is found in the record;—one specimen of each having been first introduced by defendant during the taking of dep[illegible] under the statute, and the other specimen having been subsequently introduced by plaintiff through affidavits introduced during the trial by stipulation."

Then follows an elaborate enumeration of the exhibit numbers of the things offered by the defendant and of the "(duplicate) specimens" offered by the plaintiff. The assertion that the defendant's specimens were first introduced and that the plaintiff's specimens were subsequently introduced would lead one to suspect that counsel for respondent urge, or will urge, that their specimens were the only "original and genuine" specimens and that the plaintiff's specimens were subsequent and unreliable upstarts. The fact of the matter is that the Beezley affidavit and exhibit were subscribed and sworn to on April 12, 1926 (Rec., p. 20) and filed with the clerk of the court in support of plaintiff's motion for preliminary injunction on October 29, 1926 (Rec., p. 19). The Cumming affidavit and

exhibit were subscribed and sworn to on September 13, 1926, and filed with the clerk of the court on October 29, 1926 (Rec., p. 26).

These Cumming and Beezley affidavits and exhibits have been a part of the court records ever since October 29, 1926.

On the other hand, the defendant's "specimens" were not marked or offered until January, 1928 (Rec., p. 276), and were not filed with the clerk of the court until December 31, 1928 (Rec., p. 187),—more than two years after the Beezley and Cumming affidavits and exhibits had been thus filed.

While we are upon this unpleasant subject, we had perhaps better finish it up:

Upon their second appeal, counsel for the Hollingshead Company had the opening argument in the Sixth Circuit Court of Appeals. In answer, we demonstrated the operation of the Beezley Exhibit A compressor and showed the perfect operation of its suction effect coupler precisely as described in the Gullborg patent. Then in his oral argument in reply, one of the counselors for the Hollingshead Company charged us with having removed from the Beezley Exhibit A a check valve in the passageway leading from the lower end of the barrel 15 to the conduit 19. There is such a check valve so located in the Cumming Exhibit A compressor,—quite a different form, as shown in the picture at record page 364-B, and terminating in a coupler of different form and different operation and regarded by us as a non-suction effect coupler (contributorily infringing, as we contend, the broader claims 14 and 15 only of the Gullborg patent).

In connection with this Cumming Exhibit A compressor, it had been the contention of defendant's expert, Mr. Gibson, that the check valve prevented any

back flow of grease from the conduit 19 and that the check valve therefore prevented any such relief of the pressure as might be necessary in some cases to enable a suction effect coupler to exhibit the advantages of its "suction effect" operation.

After the suction effect operation of the Beezley type A compressor had been demonstrated as a part of our oral argument in the Sixth Circuit Court of Appeals, counsel for the Hollingshead Company thought it best, apparently, to try to save the day by charging that we had removed such a check valve from the Beezley Exhibit A compressor, in order to demonstrate a suction effect upon disconnection of the coupler from a pin fitting. The following is a stenographic report of the colloquy which ensued:

> "Mr. Busser: (Counsel for The Hollingshead Co.) I don't like these demonstrations. I am not a mechanic; I am a lawyer. But Mr. Kalish tells me that in the demonstration of our Beezley exhibit there was a suction effect. He (Mr. Williams, counsel for The Bassick Co.) produced a suction effect. You remember he (Mr. Williams) admits that our first coupler does not have the suction effect but he (Mr. Williams) says the second does. In that exhibit (Beezley A), demonstrated to your Honors, this element (indicating a check valve) has been removed,—this element containing a check valve which would make it impossible for the coupler to have any suction effect.
>
> "Mr. Williams: That is not fair,—to charge us with changing these exhibits unless you have some evidence of it.
>
> "Mr. Busser: Isn't it a fact—
>
> "Mr. Williams: No.
>
> "Mr. Busser: —that that part was omitted?
>
> "Mr. Williams: No.
>
> "Mr. Busser: Not only that but this element

here is connected to a tank under a constant pressure of 150 pounds.

"Mr. Williams: Here it is—

"Judge Simons: We ought not to have this scene here.

"Mr. Williams: Here is the exhibit. It is marked. It was offered in 1926, and it has been in court ever since.

"Mr. Busser: I submit—

"Judge Moorman: Let the case be submitted."

This episode, as shown by the transcript, brought the last oral argument in the Sixth Circuit Court of Appeals to a close.

This charge of tampering with the Beezley Exhibit A has not as yet been made explicitly in this court. We shall not, therefore, pursue that phase of the matter further at this time.

As to the alleged presence of the check valve in the Beezley type compressor, counsel for the respondent do have the hardihood to say to this court in their brief in opposition to our petition for writ of certiorari, that the "evidence is clear to the effect that the **pressure** produced in the coupler element (either by the manual pumping operation or by the air pressure) **cannot be relieved** prior to disunion because the retraction of the pump piston has no appreciable effect on the pressure in the coupler part, because of the check valve which is intermediate the coupler part and the high pressure **reciprocatory-piston** (which check valve is a necessary element for the operation of all pumps of this 'reciprocatory' type), and because even if the check valve were removed (rendering the device thereafter inoperative and useless) and the piston then retracted, the air pressure of a hundred to two hundred pounds

would still be transmitted to the coupler part and that pressure alone is hundreds of times greater than the slight amount of vacuum that could possibly be produced within any coupler;—giving a net result of a substantial pressure instead of any 'suction.'" (Respondent's brief in Opposition to Petition for Writ of Certiorari, pages 10 and 11.)

The emphasis is not ours, but that of counsel for the respondent!

This assertion of the presence of a check valve in the Beezley type compressor as sold by the Hollingshead Company is indeed the last substantive paragraph of the respondent's brief in opposition to our petition. The assertion has no basis in the record,—neither in the testimony of any witness, nor in the iron and brass of the physical exhibit.

The Beezley Exhibit A compressor never did contain a check valve in the passage leading from the pump barrel 15 or anywhere in the conduit leading to the coupler. We can point to several things which indicate the truth of our statement in this regard:

(a) The reason why a slightly leaky check valve is incorporated in the outlet port of a grease gun of the Cumming Exhibit A type illustrated in the drawing on page 364-B of the record, is that there is no positive pressure to force grease from the reservoir into the pump barrel when the plunger reaches the top of its upstroke. There is no air pressure upon the grease in the reservoir as in the case of the Beezley type. It is desirable, therefore, to create some suction in the pump barrel 15 upon the upstroke of the plunger 16, so that grease will be *sucked* from the reservoir into the pump barrel at or about the conclusion of the upstroke of the piston. If some check valve or other re-

striction were not placed in the outlet port, then the suction caused by the upstroke of the plunger 16 would be satisfied by a return of grease to the pump barrel from the conduit leading to the coupler. If this suction were satisfied from that source or direction, a fresh charge of grease would not be drawn into the plunger barrel from the reservoir of the gun. All the operator could do would be to work the plunger up and down like the piston of an unprimed well-water pump, but without delivering any grease from the reservoir into the conduit leading to the coupler. In a compressor of the Cumming type, a slightly leaky check valve in the discharge port of the pump barrel 15 permits the development of a suction sufficient to draw grease from the reservoir into the pump barrel upon the upstroke of the plunger. The succeeding down stroke of the plunger will then of course deliver the newly sucked-in charge of grease to and through the conduit leading to the coupler.

As we have previously observed, however, the Beezley Exhibit A type of compressor has a reservoir R which, above the level of the grease, is filled with compressed air under a pressure of about 100 pounds per square inch. This air pressure in the reservoir is amply sufficient to force a fresh charge of lubricant into the barrel 15 of the pumping element whenever the bottom of the plunger is raised above the grease inlet port. In this compressor it is not, therefore, necessary to rely upon any suction caused by the upstroke of the plunger 16 to draw grease from the reservoir R into the barrel 15 of the pumping element. It is not necessary, therefore, to restrict the outlet from the pump barrel 15 to the conduit either by a check valve or otherwise.

A check valve at this place would, however, make it difficult, if not impossible, to relieve the pressure in the conduit preliminarily to the detachment of the coupler from the pin fitting. If the check valve were absolutely tight when seated, then the upward movement of the plunger 16 would not effect any relief whatsoever in the pressure in the conduit to the coupler. When, as is the practice in compressors of the suction supply type, a check valve is used in the discharge outlet from the pump barrel, it is made slightly leaky so that the retraction of the pumping plunger will relieve the grease pressure in the conduit. The relief of this pressure will, however, be slowed down to the extent to which the check valve seals the discharge opening. In other words, the relief of pressure will be slow. A little delay must therefore ensue before the coupler can be detached from the pin fitting.

Since, therefore, a check valve is unnecessary in the Beezley Exhibit A compressor where compressed air primes the pumping element with grease, and since even a leaky check valve slows down the relief of the pressure necessary to disconnect the coupler from the fitting, no check valve is used in the type of compressor exemplified in Beezley Exhibit A.

(b) None of the advertising and catalog illustrations of any of the compressors of the Beezley type shows or mentions the presence of any check valve. (See in addition to the catalog illustrations of the Hollingshead and Larkin compressors as incorporated in this brief immediately following page 30, the illustrations of the identical compressor as put out by the Frank Miller Co. (Rec., pp. 110-A and 110-B).

(c) In discussing the Cumming Exhibit A type of Hollingshead compressor, the defendant's expert, Mr.

Gibson, expounded at length relative to the check valve in the passage leading from the pumping barrel to the coupler conduit, claiming that this check valve prevented any relief in the grease pressure in the conduit, and asserting, therefore, that *this* Cumming type compressor was of a character which would not permit a suction effect coupler to function as such. When, however, Mr. Gibson came to discuss the Beezley type compressor, he made no mention whatsoever of the presence or deleterious action of any check valve. If there really were a check valve in the Beezley type compressor, Mr. Gibson certainly had the same reasons for gloating over its presence and its injurious effects as he had in the case of the Cumming type compressor.

If we turn now to page 193 of the record we find Mr. Gibson describing the Cumming type of compressor (Defendant's Exhibit No. 6) as follows:

> "This apparatus consists mainly of a grease receptacle, a lever piston pump, *a check valve,* a flexible hose and the coupler on the end of the hose."

We find him saying (Rec., p. 193) that

> "on the discharge end of that force pump appears *a check valve,* the operation of the pump as a whole being that the pump piston operated by the hand lever will draw grease or lubricant from the receptable and discharge it past *the check valve, this check valve* being essential to the operation of the lever pump which would be incapable of operation without *that check valve.* . . .
>
> "The pump would not operate without *that check valve* on its discharge end. It would be simply incapable of operation without it because that small pump piston depends for its supply of grease upon the closure of the discharge orifice. If that discharge orifice were not automatically closed by *a check valve* during the retracting mo-

tion of the piston, the charging motion of the piston, there would be no movement of lubricant grease from the receptacle to the cylinder of the hand lever pump. Consequently, that pump would be incapable of delivering grease at the desired pressure.

"If *the check valve* were removed and the pump piston operated, then, upon the charging stroke, that is, upon the withdrawal of the piston outwardly from its cylinder, there would be no vacuum created within the pump cylinder because that vacuum would be satisfied by the ingress of air, grease, or what not, through the passage which should be occupied and closed by *the check valve.*" Etc., Etc.

When Mr. Gibson came to describe the operation of this Cumming type compressor, he said (Rec., p. 194):

"There is no means whatever for relieving the pressure of the grease in the hose or coupler in this apparatus (marked:—Whiz High Pressure Grease Gun No. 20, R. M. Hollingshead Co., Camden, N. J.) because *the check valve* at the discharge orifice of the pump automatically prevents any possibility of relieving the pressure in the hose, and there are no means provided at all for that purpose. It would be impossible to relieve the pressure in the hose and coupler by any operation of retracting the piston of the hand lever pump or the follower piston of the receptacle; any movement of either of those pistons would have no effect whatever upon the pressure in the hose and coupler, due to the presence of *the check valve.*"

In order to make the argument that a compressor having Gullborg's suction type coupler does not infringe the Gullborg patent, if associated with a pump in which the pressure upon the coupler cannot be relieved, Mr. Gibson said further relative to the defendant's Cumming type of pump (Rec., p. 195):

"No self cleansing result or function can be produced by defendant's reciprocating type of pump (Exhibit No. 6-A)" *i. e.*, the Cumming type, "having *the check valve* at its discharge outlet, even if this pump is equipped with the Alemite hose and bayonet coupler instead of defendant's hose and bayonet coupler (Exhibits Nos. 6-B and 6-C) and the pump then operated by attachment in the only manner in which it can be operated upon attachment to the Alemite grease cup or fitting (Defendant's Exhibit No. 5).

"Defendant's pump (Defendant's Exhibit No. 6-A) would be incapable of any such vacuum or self cleansing function in the coupler *on account of the presence of the check valve* which is essential to the operation of the pump." Etc., etc.

The underlying basis for Mr. Gibson's argument was stated by him as follows (Rec., p. 195):

"The suctional function of the Gullborg coupler is limited to a type of pump which is so constructed, that the pressure produced by the pump during the act of lubrication can be entirely relieved prior to uncoupling from the grease cup, so that the cup washer of the Gullborg coupler may have an opportunity to function in a manner described in the Gullborg patent."

These somewhat limited quotations from Mr. Gibson's testimony must suffice to show that he relied heavily and almost exclusively upon the presence of the check valve in the Cumming type of pump to support his contention of non-infringement.

It should be interesting, therefore, to learn what Mr. Gibson had to say of the Beezley type of compressor as sold by the defendant, Hollingshead Company, and particularly to determine whether Mr. Gibson found in this Beezley type compressor any such check valve as had so greatly pleased him in the Cum-

ming type compressor,—any such check valve as counsel for the respondent have had the grace to charge us with having stolen out of the Plaintiff's Exhibit A of the Beezley affidavit some time after it was filed in evidence in 1926, and prior to its demonstration in the Court of Appeals on March 6, 1934.

In this instance we shall quote all that Mr. Gibson said regarding the construction of this Beezley type compressor:

> "The Alemite hose and the Alemite coupler were offered in evidence as Defendant's Exhibits Nos. 7B and 7C.
>
> "Defendant's large Service 'Compressor' was next submitted to Mr. Gibson. This service Compressor bears a label with the inscription:
>
> " 'Whiz high pressure chassis lubricant, the R. M. Hollingshead Co., Camden, N. J., U. S. A.'
>
> "This apparatus consists of a tank containing lubricant arranged for the application of air pressure for forcing lubricant out of the tank when required. A shut-off valve on the tank and a hose extending from the valve; a lever piston type on the end of the hose; a flexible metallic hose leading from the pump, and a coupler on the end of the flexible metallic hose. This apparatus in its entirety is referred to as a 'compressor.'
>
> "This last compressor is generally distinguished in the trade from the defendant's first compressor (Defendant's Exhibit No. 6) as a 'Service' or 'Garage type compressor', while the other is a portable or hand type compressor.
>
> "In the defendant's service compressor the lubricant contained in the tank is forced through the first hose to the lever piston type pump on the end of the hose by the air pressure in the tank, which is mounted at about 100 pounds per square inch.
>
> "*Without the air pressure the lever piston pump*

*on the end of the first hose would not operate because no lubricant would be supplied to it.*

"The air is supplied to the tank through a suitable valve similar to the valves used on automobile tires, and in a manner similar to placing air in tires."

There is not one word relative to any check valve!

In making this quotation from Mr. Gibson's testimony, we have italicized the sentence in which Mr. Gibson says that "Without the air pressure" (on the grease in the reservoir) "the lever piston pump on the end of the first hose would not operate because no lubricant would be supplied to it."

Mr. Gibson is here saying, in other words, precisely what we have said, namely, that the air pressure upon the grease in the reservoir forces the grease into the barrel 15 of the pumping element, whenever the plunger 16 reaches its uppermost position. When, furthermore, he says that without the air pressure the pumping element would not operate, "because no lubricant would be supplied to it," he is saying in effect that in this compressor there is *no* check valve to insure a suction upon the upstroke of the plunger piston 16 and no suction, therefore, which would operate to suck grease from the reservoir into the high pressure pump barrel.

These several reasons are, we think, sufficient to dispose of the final contention of respondent's counsel in the Court of Appeals that the suction effect operation of the Beezley Exhibit A compressor, which was admittedly there demonstrated, was due to some tampering and contemning theft of a check valve from the Beezley Exhibit A compressor by counsel for the petitioner.

We think these considerations should also dispose of any such contention, when and if it is more explicitly advanced in this Court.

2. THE ANSWER TO THE RESPONDENT'S REPRESENTATION THAT THE COMPRESSOR WHICH HOLLINGSHEAD SOLD TO BEEZLEY IS OF A CHARACTER SUCH "THAT THE NORMAL AND ANY POSSIBLE OPERATION OF THIS GREASE GUN UNIT PRODUCES A PRESSURE IN THE COUPLER PART MANY HUNDRED TIMES GREATER THAN THE VERY SLIGHT AMOUNT OF VACUUM OR 'SUCTION' WHICH COULD POSSIBLY BE PRODUCED WITHIN THE COUPLER ELEMENT, AND THAT THIS MUCH LARGER PRESSURE CANNOT BE RELIEVED PRIOR TO DISUNION." (Page 9, Respondent's Brief in Opposition to Petition for Writ of Certiorari.)

The respondent's argument is that although the compressor which it sold to Beezley terminated in a suction effect coupler like that described and claimed in the Gullborg patent, still the respondent associated it with a form of grease pump such that the suction effect coupler could not have its suction effect. The argument is further that even though the grease gun and coupler sold by the Hollingshead Company with the expectation and intention that they would be used in conjunction and combination with the Alemite pin fittings of the Gullborg patent, correspond in every detail with the claims of the Gullborg patent, still there is no contributory infringement because the defendant has rendered its suction effect coupler entirely useless as such by associating it with a grease gun of a character in which it is impossible to relieve the pressure in any way which will permit the suction effect coupler to function as such.

Counsel base this contention wholly upon some testimony given by their expert, Mr. Gibson, and upon a constantly reiterated misstatement of Mr. Gibson's testimony. They say, for example, on page 8 of their brief in opposition to the petition for writ of certiorari, that

> "The only evidence in the record is to the effect that respondent's large 'Service' grease gun is inherently of such a construction as makes it **impossible** to produce any so-called 'suction effect' or self cleansing action in the coupler part of the grease gun at the moment of disunion from the 'fitting.'" (The emphasis is that of Respondent's Counsel.)

Counsel refer in this connection to Mr. Gibson's testimony at pages 196 to 199 and pages 227 and 228 of the record.

Let us see what Mr. Gibson really did say and do. He said (Rec., p. 196):

> "The defendant's service compressor was then applied to an Alemite grease cup or fitting fixed to a spring bearing, by the attachment of the coupler of defendant's service compressor to said Alemite grease cup and the compressor was operated, forcing grease into and through the bearing."

This means that Gibson had forced the handle 18 and the plunger 16 down to their lowermost position, as shown in our Fig. 9 of this brief.

Mr. Gibson then says that

> "Upon uncoupling, a considerable quantity of lubricant was found both on the fitting or grease cup and in and around the coupler." (Rec., p. 196.)

What does this mean?

It means simply that Mr. Gibson had arranged his Alemite pin fitting in such a way as to prevent or as

greatly to restrict the free out-flow of grease from it into the bearing or its equivalent. Having provided against any relief of the pressure in this direction, he was particular also not to raise the handle 18 and the piston 16 from their lowermost position, as shown in Fig. 9, to an intermediate position such as shown in Fig. 10 (and particular also not to let the grease pressure effect this upward movement of the plunger 16), before he detached his coupler from the fitting. Mr. Gibson was of course doing one of the two things which might be done in a deliberate attempt to prevent the suction effect coupler from having or producing its "suction effect".

What next did Mr. Gibson do?

He says (Rec., p. 197):

> "The lubricating operation was again repeated with the fitting or grease cup and coupler cleansed, and prior to disconnecting the coupler from the grease cup, (~~and~~) the piston of the pump or compressor unit was retracted. Upon disconnecting the coupler from the grease cup the grease exuded and continued to exude from the coupler and deposited itself freely on the grease cup and elsewhere.
>
> "This last result is due to the fact that in defendant's 'service' type 'compressor' the lubricant is supplied or fed to the hand lever pump by the air pressure in the tank and the piston of the hand lever pump acts as a valve which shuts off the flow of lubricant from the tank when the piston is fully depressed. When the piston is retracted the air pressure in the tank can force the grease or lubricant through the pump and through and from the coupler."

What does this mean?

It means that in this second demonstration Mr. Gibson first operated the piston plunger 16 to force grease

to or into the pin fitting, and that he then deliberately moved the handle 18 and the plunger 16 into their uppermost position, as shown in Fig. 7 of this brief. Having gotten the plunger 16 into this uppermost position, and while continuing to hold it there, he detached the coupler from the pin fitting. The result was, of course, that the 100 pounds of compressed air pressure in the upper part of the reservoir R forced a stream of grease through the pipe P, the flexible hose F, and thence through the wide-open ports of the pumping chamber 15 to the conduit 19 and the coupler body 24, and thence "freely on the grease cup and" (as Mr. Gibson delicately puts it) "elsewhere."

Under these carefully prearranged conditions the grease would continue to be squirted out of the coupler into the "elsewhere" as long as the plunger 16 were held in its uppermost position and as long as there continued to be any available grease left in the reservoir R.

Not once did Mr. Gibson apply the coupler of his "specimen" of Hollingshead's Beezley type compressor to a pin fitting associated with a normally free bearing, in which case the pressure would be relieved through the bearing itself before the detachment of the coupler from the fitting. Not once did Mr. Gibson see fit, in connection with his plugged or tight bearings, to retract the handle 18 and the plunger 16 from the position shown in Fig. 9 to the position shown in Fig. 10 before detaching the coupler from the pin fitting.

He did not do these things in the way that every garage mechanic does them for the reason that he was bent upon preventing the "suction effect" coupler from having its effect. He was bent upon putting counsel for the Hollingshead Company in a position to enjoy

whatever element of concealment he might supply, when, saying, as they do, that the "uncontradicted evidence" shows

> "that respondent's large 'Service' grease gun is inherently of such a construction as makes it **impossible** to produce any so-called 'suction effect' or 'self-cleansing' action in the coupler part of the grease gun at the moment of disunion from the 'fitting'." (Page 8, Respondent's Brief in Opposition to Petition for Writ of Certiorari.)

(The bold-face emphasis is not ours, but rather that of counsel for the respondent.)

3. The Respondent's Argument That Mr. Gibson's Testimony Is "Uncontradicted."

What Mr. Gibson did was to tell a half truth. A half truth cannot perhaps be "contradicted." Mr. Gibson did not tell the whole truth. It is possible to tell the whole truth. The whole truth explains away the seeming effect of the half truth.

Mr. Gibson misused the respondent's Beezley type compressor in such a way as to prevent the suction effect coupler from performing its function as such. He was careful not to use the apparatus in its intended manner and in such a way as would have caused the suction effect coupler to produce its self-cleansing suction effect.

The Beezley Exhibit A compressor was in evidence and is in evidence. A mere understanding of it shows the fallacy of the deductions and arguments which counsel for the respondent base upon the "uncontradicted" testimony of their "expert" witness, Mr. Gibson. A moment's demonstration of the Beezley Exhibit A compressor is sufficient to show the untruth of counsel's assertions and contentions.

It was not, in our opinion, necessary to burden the courts with the testimony of any expert witness in reply to such testimony as that given by Mr. Gibson relative to such simple and quickly demonstrable apparatus as that which is here involved. It is still our hope that it should not be necessary to burden the records in patent suits with such "expert testimony" as has made the records in patent suits almost a byword.

Regardless whether the carefully chosen half truths of Mr. Gibson have been "contradicted," the assertions of counsel for the respondent, allegedly based upon this testimony, are contradicted by a mere understanding of the simple mechanism relative to which their contentions are advanced. Their contentions are contradicted by a moment's demonstration of the apparatus toward which they are directed.

4. Relative to Claims 14 and 15 of Gullborg Patent 1,307,734.

Claims 14 and 15 of the Gullborg patent are broader in their description of the coupler part of the combination than are claims 1, 2, 3, 4, 5, 6, 8 and 10. Claims 14 and 15 are, however, narrower than the other claims in their description of the pin fitting part of the combination.

Since, however, the pin fittings with which the Hollingshead Company admittedly intended their compressors to be used, incorporated all of the details of the pin fitting parts of the combination, as recited in claims 14 and 15, it is obvious that if the sales of the defendant's compressors constituted a contributory infringement of the narrower coupler claims, they must

have constituted also an infringement of the broader coupler claims.

In so far as the Hollingshead Company's Beezley type compressor is concerned, it is probably not a matter of much consequence whether its sales be regarded as an infringement of claims 1, 2, 3, 4, 5, 6, 8 and 10 only, or as an infringement also of claims 14 and 15. An injunction under the earlier claims will prevent further sales of this compressor just as effectively as would an injunction under the later claims also.

Claims 14 and 15 are more critically involved in the companion case of *Rogers et al.*, defendant-petitioner, vs. *Alemite Corporation*, plaintiff-respondent, which has been set for argument upon a writ of certiorari concurrently with the argument in this present case, and the same counsel appear on behalf of the plaintiffs and defendants in the two cases. It will conserve the convenience of everyone concerned, therefore, to discuss these claims 14 and 15 more particularly in conjunction with the *Rogers* case.

## G.

## In Conclusion.

We contend and submit:

That the coupler of the compressor sold by Hollingshead to Beezley was of the "suction effect" type, corresponding exactly with that of the Gullborg patent.

That the grease gun or pump parts of this compressor are of a character which makes it easy and natural to relieve the grease pressure whenever it is necessary to do so in order to detach the coupler from the associated pin fitting and to secure the advantages of the suction effect function of the coupler in every instance

regardless whether the pressure be relieved by the outflow of grease through the fitting, or by the retraction of the pumping plunger of the grease gun.

That the Hollingshead Company's sales of their compressors constituted a contributory infringement of the admittedly valid Gullborg patent.

Respectfully,

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